



As filed with the Securities and Exchange Commission on April 3, 2017

Registration No. 333-

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM F-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**Banco Santander, S.A.**

(Exact Name of Registrant as Specified in Its Charter)

**Kingdom of Spain**

(State or Other Jurisdiction of Incorporation or Organization)

**Not Applicable**

(I.R.S. Employer Identification No.)

**Ciudad Grupo Santander**

**28660 Boadilla del Monte (Madrid), Spain**

**+34 91 259 6520**

(Address and Telephone Number of Registrant's Principal Executive Offices)

**Banco Santander, S.A.**

**New York Branch**

**45 E. 53rd Street**

**New York, New York 10022**

**Attn: James H. Bathon, Legal Counsel**

**(212) 350-3500**

(Name, Address and Telephone Number of Agent for Service)

*Please send copies of all communications to:*

**Nicholas A. Kronfeld**

**Davis Polk & Wardwell LLP**

**450 Lexington Avenue**

**New York, NY 10017**

**Tel. No.: (212) 450-4000**

**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this Registration Statement.



If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, please check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.C. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.C. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered/Proposed maximum offering pre unit/Proposed maximum price(1)	Amount of registration fee(2)
Ordinary senior debt securities	Unspecified	\$0
Second ranking senior debt securities	Unspecified	\$0
Subordinated debt securities	Unspecified	\$0
Contingent convertible capital securities	Unspecified	\$0
Ordinary shares(3)	Unspecified	\$0

- (1) An unspecified initial offering price, aggregate number of, principal amount of, or liquidation preference of, the ordinary senior debt securities, the second ranking senior debt securities, the subordinated debt securities, the contingent convertible capital securities and the ordinary shares, are being registered as may from time to time be offered at unspecified prices. Separate consideration may or may not be received for securities that are issuable on exercise, conversion or exchange of other securities or that are issued in units or represented by depository shares.
- (2) In accordance with Rules 456(b) and 457(r) under the Securities Act, the registrants are deferring payment of all of the registration fee.
- (3) The ordinary shares are being registered in connection with issuances from time to time following the conversion of contingent convertible capital securities. American Depositary Shares issuable upon deposit of the ordinary shares registered hereby have been registered under a separate Registration Statement on Form F-6 (Registration Statement No. 333-213557).



*PROSPECTUS*

**Banco Santander, S.A.**

By this prospectus we may offer —

**DEBT SECURITIES  
CONTINGENT CONVERTIBLE CAPITAL SECURITIES  
ORDINARY SHARES**

---

Banco Santander, S.A. may use this prospectus to offer from time to time ordinary senior debt securities, second ranking senior debt securities, subordinated debt securities, contingent convertible capital securities and, solely in connection with the issuance of contingent convertible capital securities, ordinary shares (including in the form of American Depositary Shares). Banco Santander, S.A.'s American Depositary Shares, or ADSs, each representing the right to receive one share of capital stock of Banco Santander, S.A., are listed on the New York Stock Exchange under the symbol "SAN". In addition, Banco Santander, S.A.'s ordinary shares are listed on the Madrid, Barcelona, Bilbao and Valencia stock exchanges (the "Spanish Stock Exchanges") and quoted on the Automated Quotation System of the Spanish Stock Exchanges (the "Automated Quotation System"). Banco Santander, S.A.'s ordinary shares are also listed on the London (in the form of CREST Depository Interests), São Paulo (in the form of Brazil Depository Shares), Milan, Lisbon, Buenos Aires, Warsaw and Mexico stock exchanges.

This prospectus describes the general terms of these securities and the general manner in which we will offer these securities. We will provide the specific terms of any series of these securities, and the manner in which they will be offered, in one or more supplements to this prospectus. Any supplement may also add, update or change information contained, or incorporated by reference, into this prospectus. You should read this prospectus and the applicable prospectus supplement carefully before you invest in our securities.

You should read both this prospectus and the applicable prospectus supplement, together with the additional information described under the headings "Where You Can Find More Information" and "Incorporation of Documents by Reference", before investing in any of the securities described in the prospectus. The amount and price of the offered securities will be determined at the time of the offering.

**Investing in our securities involves risks. See "[Risk Factors](#)" beginning on page 3.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined that this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

**This prospectus may not be used to offer or sell any securities unless it is accompanied by a prospectus supplement.**

The date of this prospectus is April 3, 2017.



**TABLE OF CONTENTS**

---

	<u>Page</u>
<a href="#"><u>About this Prospectus</u></a>	1
<a href="#"><u>Use of Proceeds</u></a>	2
<a href="#"><u>Banco Santander, S.A.</u></a>	2
<a href="#"><u>Risk Factors</u></a>	3
<a href="#"><u>Description of Debt Securities</u></a>	36
<a href="#"><u>Description of Contingent Convertible Capital Securities</u></a>	62
<a href="#"><u>Description of Certain Provisions Relating to Debt Securities and Contingent Convertible Capital Securities</u></a>	105
<a href="#"><u>Description of Ordinary Shares</u></a>	110
<a href="#"><u>Description of American Depositary Shares</u></a>	111
<a href="#"><u>Taxation</u></a>	117
<a href="#"><u>Benefit Plan Investor Considerations</u></a>	141
<a href="#"><u>Plan of Distribution (Conflicts of Interest)</u></a>	143
<a href="#"><u>Legal Opinions</u></a>	145
<a href="#"><u>Experts</u></a>	145
<a href="#"><u>Enforcement of Civil Liabilities</u></a>	145
<a href="#"><u>Where You Can Find More Information</u></a>	145
<a href="#"><u>Incorporation of Documents by Reference</u></a>	146
<a href="#"><u>Cautionary Statement on Forward-Looking Statements</u></a>	147



200FX&amp;=8eN3jCjL

**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement on Form F-3 that we filed with the Securities and Exchange Commission (“SEC”) using a “shelf” registration or continuous offering process. Under this shelf process, we may sell the securities described in this prospectus in one or more offerings of an unspecified amount in one or more foreign currencies or currency units.

This prospectus provides you with a general description of the debt securities and contingent convertible capital securities (convertible into ordinary shares upon a trigger event) we may offer, which we will refer to collectively as the “securities”. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement will provide information regarding certain tax consequences of the purchase, ownership and disposition of the offered securities. The prospectus supplement may also add to, update or change information contained in this prospectus. If there is any inconsistency between the information in this prospectus and any prospectus supplement, you should rely on the information in that prospectus supplement. We will file each prospectus supplement with the SEC. You should read both this prospectus, the applicable prospectus supplement and any related issuer free writing prospectus, together with the additional information described under the headings “Where You Can Find More Information” and “Incorporation of Documents by Reference”.

The registration statement containing this prospectus, including exhibits to the registration statement, provides additional information about us and the securities offered under this prospectus. Statements contained in this prospectus and the applicable prospectus supplement about the provisions or content of any agreement or other document are only summaries. If SEC rules require that any agreement or document be filed as an exhibit to the registration statement, you should refer to that agreement or document for its complete contents. The registration statement can be read at the SEC’s offices or obtained from the SEC’s website mentioned under the heading “Where You Can Find More Information”.

**Certain Terms**

In this prospectus, the following terms will have the meanings set forth below, unless otherwise indicated or the context otherwise requires

- “Banco Santander” means Banco Santander, S.A. and the term “Group” means Banco Santander, S.A. and its consolidated subsidiaries;
- “debt securities” refers to the ordinary senior debt securities, second ranking senior debt securities and subordinated debt securities;
- “ordinary senior debt securities” refers to the ordinary senior unsubordinated debt securities issued by Banco Santander;
- “second ranking senior debt securities” refers to the second ranking senior unsubordinated debt securities issued by Banco Santander;
- “securities” refers to the debt securities and the contingent convertible capital securities;
- “subordinated debt securities” refers to the subordinated debt securities issued by Banco Santander;
- “we”, “our” and “us” refers to Banco Santander as issuer;
- “\$”, “US\$”, “U.S. dollars” and “dollars” refer to United States dollars; and
- “€” and “euro” refer to euro.



### USE OF PROCEEDS

Unless we have disclosed a specific plan in the accompanying prospectus supplement, we will use the net proceeds from the sale of the securities offered by this prospectus for general corporate purposes. The Group has raised capital in various markets from time to time and we expect to continue to raise capital in appropriate markets as and when required.

### BANCO SANTANDER, S.A.

Banco Santander, S.A. is the parent bank of the Group. The Group operates principally in Spain, the United Kingdom, other European countries, Brazil and other Latin American countries and the United States, offering a wide range of financial products. In Latin America, the Group has majority shareholdings in banks in Argentina, Brazil, Chile, Mexico, Peru and Uruguay.

Banco Santander, S.A. was established on March 21, 1857 and incorporated in its present form by a public deed executed in Santander, Spain, on January 14, 1875. Banco Santander, S.A. is incorporated under, and governed by, the laws of the Kingdom of Spain as a company with unlimited duration and with limited liability (sociedad anónima).

Banco Santander, S.A. conducts business under the commercial name "Santander". The Group's principal corporate offices are located in Ciudad Grupo Santander, Avenida de Cantabria s/n, 28660 Boadilla del Monte, Madrid, Spain, and its telephone number is (011) 34-91-259-6520.



## RISK FACTORS

*Prospective investors should consider carefully the risk factors incorporated by reference into this prospectus and as set out below as well as the other information set out elsewhere in this prospectus (including any other documents incorporated by reference herein) and reach their own views prior to making any investment decision with respect to any of the securities described in this prospectus.*

*Set out below and incorporated by reference herein are certain risk factors which could have a material adverse effect on Banco Santander's and the Group's business, operations, financial condition or prospects and cause future results to be materially different from expected results. Banco Santander's results could also be affected by competition and other factors. These factors should not be regarded as a complete and comprehensive statement of all potential risks and uncertainties that Banco Santander and the Group face. Described are only those risks relating to Banco Santander's and the Group's operations or an investment in the securities that Banco Santander considers to be material. There may be additional risks that Banco Santander currently considers not to be material or of which they are not currently aware, and any of these risks could have the effects set forth below. All of these factors are contingencies which may or may not occur and Banco Santander is not in a position to express a view on the likelihood of any such contingency occurring. Investors should note that they bear Banco Santander's and the Group's solvency risk. Each of the risks highlighted below could have a material adverse effect on the amount of principal, interest, liquidation preference and distributions which investors will receive in respect of the securities. In addition, each of the highlighted risks could adversely affect the trading price of the securities or the rights of investors under the securities and, as a result, investors could lose some or all of their investment. Holders of contingent convertible capital securities or debt securities should consult their own financial, tax and legal advisers regarding the risks of an investment in the securities.*

*Capitalized terms and certain other terms used in this section "Risk Factors", unless otherwise defined in this section, have the meanings assigned to them in "Description of Debt Securities" and "Description of Contingent Convertible Capital Securities" below.*

### **Risks relating to Banco Santander and the Group**

For a description of the risks associated with Banco Santander and the Group, see the section entitled "Risk Factors" of Banco Santander's Annual Report on Form 20-F for the year ended December 31, 2016, which is incorporated by reference herein.

### **Risks Relating to the Securities**

***Holders of any series of securities may experience a loss in their investment in the event Banco Santander becomes subject to a resolution process under Law 11/2015 (or in the event that loss absorption is required by the SRB to avoid a resolution process).***

Chapter VI of Law 11/2015, of June 18, for the recovery and resolution of credit entities and investment firms, as amended or superseded from time to time ("Law 11/2015"), regulates a set of measures targeted at ensuring that shareholders, subordinated creditors (including holders of securities) and certain senior creditors bear losses through a burden sharing mechanism within the framework of resolution processes. These measures could include the discharge of any indebtedness and a stay of payment in respect of any indebtedness imposed by the Single Resolution Board (the "SRB"), the *Fondo de reestructuración ordenada bancaria* (the "FROB") or any other entity with the authority to exercise the relevant tools and powers from time to time under Law 11/2015 (each, a "Relevant Resolution Authority"), even against the will or without the consent of those holding the relevant securities. Measures include repurchases of the debt securities at a certain price determined by the FROB, write-downs of the nominal value of preferred and debt securities or their exchange for other securities. Potential investors in the securities of any series should consider the risk that a holder may lose all or part of its investment if Banco Santander became the subject of a resolution process (or, in the case of investors in the subordinated debt securities or contingent convertible capital securities of any series, in the event that loss absorption were required by the SRB to avoid a resolution process of Banco Santander) and a loss absorption measure was taken with respect to the securities of such series in accordance with Chapter VI of Law 11/2015.



***There is no active trading market for the securities.***

Securities issued pursuant to this prospectus (other than Banco Santander’s ordinary shares) will be new securities which may not be widely distributed and for which there is currently no active trading market and no active trading market may develop. If securities of any series are traded after their initial issuance, they may trade at a discount to their initial offering price, depending on a number of factors, including: prevailing interest rates, the number of holders of such series of securities, the market for similar securities, general economic conditions and the financial condition of Banco Santander and Banco Santander’s credit ratings published by credit rating agencies, the interest of securities dealers in making a market for such series of securities and the introduction of any financial transaction tax. Although Banco Santander may submit applications to list any series of securities on recognized stock exchanges, there is no assurance that such applications will be accepted, that any particular series of securities will be so admitted or that an active trading market will develop, or if developed, that it will continue. If an active trading market does not develop or is not maintained in respect of a particular series of securities, the market price and liquidity of the securities of such series, as applicable, may be adversely affected. In that case, holders of the securities of such series may not be able to sell the securities of such series at a particular time or may not be able to sell securities of such series at a favorable price.

***The securities of any series are subject to the subordination provisions of the Spanish Insolvency Law.***

Law 22/2003 (*Ley Concursal*) dated 9 July 2003 (“Law 22/2003” or the “Spanish Insolvency Law”), which became effective on September 1, 2004 supersedes all pre-existing Spanish provisions which regulated Banco Santander’s bankruptcy, insolvency (including suspension of payments) and any process affecting creditors’ rights generally, including the ranking of its credits.

Law 22/2003 provides, among other things, that: (i) any claim may become subordinated if it is not reported to the insolvency administrators (*administradores concursales*) within one month from the last official publication of the court order declaring the insolvency, (ii) provisions in a contract granting one party the right to terminate by reason only of the other’s insolvency will not be enforceable, and (iii) interest (other than interest accruing under secured liabilities up to an amount equal to the value of the asset subject to the security) shall cease to accrue as from the date of the declaration of insolvency and any amount of interest accrued up to such date (other than any interest accruing under secured liabilities up to an amount equal to the value of the asset subject to the security) shall become subordinated.

Law 11/2015 established the ranking of claims under Article 92.2° of the Spanish Insolvency Law for Spanish banking insolvency proceedings. According to Law 11/2015: (a) principal of subordinated debt securities qualifying as Tier 2 Instruments will rank (i) *pari passu* among themselves and with the principal of any other contractually subordinated obligations of the relevant debtor qualifying as Tier 2 Instruments, (ii) senior to any principal of contractually subordinated obligations of the relevant debtor qualifying as Additional Tier 1 Instruments and (iii) junior to any principal of contractually subordinated obligations of the relevant debtor not qualifying as Additional Tier 1 Instruments or Tier 2 Instruments, and (b) principal of contingent convertible capital securities qualifying as Additional Tier 1 will rank (i) *pari passu* among themselves and with the principal of any other contractually subordinated obligations of the relevant debtor qualifying as Additional Tier 1, and (ii) junior to any principal of contractually subordinated obligations of the relevant debtor not qualifying as Additional Tier 1.

Any payments of interest in respect of debt securities, or Distributions in respect of contingent convertible capital securities, will be subject to the subordination provisions of Article 92.3° of the Spanish Insolvency Law.

The Spanish Insolvency Law, in certain instances, also has the effect of modifying or impairing creditors’ rights even if the creditor, either secured or unsecured, does not consent to the amendment. Secured and unsecured dissenting creditors may be written down not only once the insolvency has been declared by the judge as a result of the approval of a creditors’ agreement, but also as a result of an out-of-court restructuring agreement without insolvency proceedings having been previously opened (e.g., refinancing agreements which satisfy certain requirements and are validated by the judge), in both scenarios (i) to the extent that certain qualified majorities are achieved and unless (ii) some exceptions in relation to the kind of claim or creditor apply (which would not be the case for the securities).

The majorities legal regime envisaged for these purposes also hinges on (i) the type of the specific restructuring measure which is intended to be imposed (e.g., extensions, debt reductions, debt for equity swaps, etc.) as well as (ii) on the part of claims to be written-down (i.e. secured or unsecured, depending on the value of the collateral as calculated pursuant to the rules established in the Spanish Insolvency Law).





200FX&=&eN3kbwnLY

In no case shall subordinated creditors be entitled to vote upon a creditors' agreement during the insolvency proceedings, and accordingly, shall be always subject to the measures contained therein, if passed.

***Under the terms of the securities of any series, holders of such securities shall have agreed to be bound by and consent to the exercise of any resolution tool by the Relevant Resolution Authority.***

Notwithstanding any other term of the securities of any series or any other agreements, arrangements, or understandings between Banco Santander and any holder of the securities of any series, by its acquisition of the securities of any series, each holder (which, for the purposes of this risk, includes each holder of a beneficial interest in the securities of any series) acknowledges, accepts, consents and agrees to be bound by the effect of the exercise of any resolution tools (including the sale of business tool, the bridge institution tool, and the asset separation tool) by the Relevant Resolution Authority in compliance with any laws, regulations, rules or requirements in effect in the Kingdom of Spain, relating to (i) the transposition of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, as amended or superseded from time to time (the "Bank Recovery and Resolution Directive" or "BRRD"), including but not limited to Law 11/2015, and Royal Decree 1012/2015, of 6 November developing Law 11/2015, as amended or superseded from time to time ("RD 1012/2015"), (ii) the Regulation (EU) No. 806/2014 of the European Parliament and of 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 superseded from time to time (the "SRM Regulation") and (iii) the instruments, rules and standards created thereunder.

The potential impact of any resolution tool may include the total loss of value of the securities of any series, and under certain circumstances, the inability of Banco Santander to perform its obligations under its securities.

See "*—Law 11/2015 enables a range of actions to be taken in relation to credit institutions and investment firms considered to be at risk of failing. The taking of any action under Law 11/2015 could materially affect the value of any debt securities*" and "*—Law 11/2015 enables a range of actions to be taken in relation to credit institutions and investment firms considered to be at risk of failing. The taking of any action under Law 11/2015 could materially affect the value of any contingent convertible capital securities*" below for a further description of the range of actions which may be taken.

***Because global securities will be held by or on behalf of DTC, investors will have to rely on their procedures for transfer, payment and communication with Banco Santander.***

The securities of any series issued may be represented by one or more global securities. Such global securities will be registered with Cede & Co. as a nominee of the Depository Trust Company ("DTC"), and may be held through a DTC participant, including Euroclear and Clearstream. Except in the circumstances described in the relevant global security, investors will not be entitled to receive definitive securities. DTC will maintain records of the beneficial interests in the global securities. While the securities are represented by one or more global securities, investors will be able to trade their beneficial interests only through DTC (or any other clearing system that is a direct or indirect participant in DTC).

While the securities of any series are represented by one or more global securities, Banco Santander will discharge their payment obligations under the securities of such series by making payments to the common depository or Principal Paying Agent for DTC for distribution to their account holders. A holder of a beneficial interest in a global security must rely on the procedures of DTC, or if such interest is held through a DTC participant, the procedures of such DTC participant, to receive payments under the relevant series of securities. Banco Santander has no responsibility or liability for the records relating to, or payments made in respect of, beneficial interests in the global securities.

Holders of beneficial interests in the global securities will not have a direct right to vote in respect of the relevant series of securities. Instead, such holders will be permitted to act only to the extent that they are enabled by DTC to appoint appropriate proxies. Similarly, holders of beneficial interests in the global securities will not have a direct right under the global securities to take enforcement action against Banco Santander in the event of a default under the relevant series of securities but will have to rely upon their rights under the relevant indenture.



***Banco Santander is required to provide certain information related to securities of any series to the Spanish tax authorities.***

Article 44 of Royal Decree 1065/2007, as amended (“Royal Decree 1065/2007”) sets out the reporting obligations applicable to preferred securities (*participaciones preferentes*), such as the contingent convertible capital securities of any series, and debt instruments (such as the debt securities), in each case, issued under Law 10/2014. The procedures apply to income derived from preferred securities and debt instruments to which Law 10/2014 refers, including debt instruments issued at a discount for a period equal to or less than twelve months.

According to Article 44.5 of Royal Decree 1065/2007, income derived from preferred securities or debt instruments issued under Law 10/2014 and which have been originally registered with entities that manage clearing systems located outside Spain (provided that these entities are recognized by Spanish law or by the law of another Organization for Economic Cooperation and Development (“OECD”) country such as DTC, Euroclear and Clearstream, Luxembourg), will be paid free of Spanish withholding tax provided that the Principal Paying Agent appointed by Banco Santander submits, in a timely manner, a statement to Banco Santander, with the following information:

- (i) identification of the securities;
- (ii) income payment date (or refund if the securities are issued at discount or are segregated);
- (iii) total amount of income (or total amount to be refunded if the securities are issued at discount or are segregated); and
- (iv) total amount of the income corresponding to each clearing system located outside Spain.

For these purposes, “income” means interest and the difference, if any, between the aggregate amount payable on the redemption of the securities of any series and the issue price of the securities of such series.

In accordance with Article 44 of Royal Decree 1065/2007, the Principal Paying Agent should provide Banco Santander with the statement reflecting the relevant position at the close of business on the business day immediately prior to each interest payment date. In the event that on such date, an entity obliged to provide the declaration fails to do so, Banco Santander or the Principal Paying Agent on its behalf will make a withholding at the then applicable general rate (currently set at 19%) on the total amount of the return on the relevant debt securities or contingent convertible capital securities otherwise payable to their holders.

Notwithstanding the foregoing, in the event that withholding tax were required by law due to the failure of the Principal Paying Agent to submit in a timely manner a duly executed and completed certificate pursuant to Law 10/2014 and Royal Decree 1065/2007 and any implementing legislation or regulation, Banco Santander will not pay any additional amounts with respect to any such withholding, as provided in “Description of Debt Securities—Additional Amounts” and “Description of Contingent Convertible Capital Securities—Additional Amounts” below.

In the event that the currently applicable procedures are modified, amended or supplemented by, among other things, any Spanish law, regulation, interpretation or ruling of the Spanish tax authorities, Banco Santander will notify the holders of the relevant series of securities, as applicable, of such information procedures and their implications, as Banco Santander may be required to apply withholding tax on interest payments or Distributions, as applicable, in respect of the relevant series of securities if the holders of such series of securities do not comply with such information procedures.

***Potential FATCA Withholding After December 31, 2018***

Under certain provisions of the United States Internal Revenue Code of 1986, as amended (commonly referred to as “FATCA”), and Treasury regulations promulgated thereunder, as well as certain intergovernmental agreements between the United States and certain other countries (including Spain), certain payments made in respect of the debt securities, contingent convertible capital securities, ADSs or Conversion Shares after December 31, 2018 may be subject to withholding at a rate of 30%, to the extent that such payments are considered to be “foreign passthru



payments” (“FATCA withholding”). Banco Santander (or a relevant intermediary) may be required to impose FATCA withholding on such payments made to non-U.S. financial institutions (including intermediaries) that have not entered into agreements with the Internal Revenue Service pursuant to FATCA or otherwise established an exemption from FATCA, and other holders that fail to provide sufficient identifying information to Banco Santander or any relevant intermediary. Under current guidance it is not clear whether and to what extent payments on the debt securities, contingent convertible capital securities, ADSs and Conversion Shares will be considered foreign passthru payments subject to FATCA withholding or the extent to which foreign passthru payment withholding will be required under intergovernmental agreements and their implementing legislation or regulations. The United States has entered into intergovernmental agreements for the implementation of FATCA with many other jurisdictions (including Spain). Payments on debt securities that are issued on or before the date which is six months after the date on which final Treasury regulations defining the term “foreign passthru payments” are filed with the Federal Register, and are not materially modified after such date, will not be subject to passthru payment withholding under FATCA. Investors should consult their tax advisors as to how these rules may apply to payments they receive on the debt securities, contingent convertible capital securities, ADSs or Conversion Shares.

***The proposed financial transaction tax (“FTT”)***

On February 14, 2013, the European Commission published a proposal (the “Commission’s Proposal”) for a Directive for a common FTT in Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia (although Estonia has since stated that it will not participate) (the “participating Member States”).

The Commission’s proposal has very broad scope and could, if introduced, apply to certain dealings in the securities (including secondary market transactions) under certain circumstances. The issuance and subscription for the securities should, however, be exempt.

Under the Commission’s Proposal, the FTT could apply in certain circumstances to persons both within and outside of the participating Member States. Generally, it would apply to certain dealings in the securities where at least one party is a financial institution, and at least one party is established in a participating Member State. A financial institution may be, or be deemed to be, “established” in a participating Member State in a broad range of circumstances, including (a) by transacting with a person established in a participating Member State or (b) where the financial instrument which is subject to the dealings is issued in a participating Member State.

The FTT may give rise to tax liabilities for Banco Santander with respect to certain transactions if it is adopted based on the Commission’s Proposal. Examples of such transactions are the conclusion of a derivative contract in the context of Banco Santander’s hedging arrangements or the purchase or sale of securities. It should also be noted that the FTT could be payable in relation to relevant transactions by investors in respect of the securities (including secondary market transactions) if conditions for a charge to arise are satisfied and the FTT is adopted based on the Commission’s Proposal. Primary market transactions referred to in Article 5(c) of Regulation EC No 1287/2006 are expected to be exempt.

The Commission’s Proposal remains subject to negotiation by the participating Member States and the scope of any such tax is uncertain. Similarly, the timing of the enactment of the Commission’s Proposal, if at all, as well as the number of Member States who may elect to participate, is uncertain as of the date of this prospectus. Additional Member States of the European Union may decide to participate.

As such, prospective investors are advised to seek their own professional advice in relation to FTT.

If introduced, certain dealings in the securities may be subject to the FTT, in which case neither Banco Santander nor the Principal Paying Agent nor any other person would be obliged to pay additional amounts with respect to any security as a result of imposition of such tax.

***The Market value of the securities is likely to be limited by early redemption features***

Early redemption features are likely to limit the market value of the securities. During any period when Banco Santander may redeem the securities, the market value of those instruments generally will not rise substantially above the price at which they can be redeemed. Banco Santander may be expected to redeem the securities when its cost of borrowing is lower than the interest rate on the securities. At those times, an investor generally would not be able to reinvest the redemption proceeds at an effective interest rate as high as the interest rate on the securities being redeemed and may only be able to do so at a significantly lower rate. Potential investors should consider reinvestment risk in light of other investments available at that time.



## Risks Relating to the Debt Securities

***Law 11/2015 enables a range of actions to be taken in relation to credit institutions and investment firms considered to be at risk of failing. The taking of any action under Law 11/2015 could materially affect the value of any debt securities.***

On May 6, 2014, the Council of the European Union adopted the BRRD. The BRRD was published in the official Journal of the EU on June 12, 2014 and is designed to provide authorities with tools to intervene in unsound or failing credit institutions and investment firms (“institutions”) to ensure the continuity of the institution’s critical financial and economic functions, while minimizing the impact of an institution’s failure on the economy and financial system. On June 18, 2015, Spain approved Law 11/2015 to implement the BRRD in Spain.

Law 11/2015 contains four resolution tools and powers which may be used alone or in combination where the Relevant Resolution Authority considers that (a) an institution is failing or likely to fail, (b) there is no reasonable prospect that any alternative private sector measures would prevent the failure of such institution within a reasonable timeframe, and (c) a resolution action is in the public interest: (i) sale of business - which enables resolution authorities to direct the sale of the firm or the whole or part of its business on commercial terms; (ii) bridge institution - which enables resolution authorities to transfer all or part of the business of the firm to a “bridge institution” (an entity created for this purpose that is wholly or partially in public control); (iii) asset separation - which enables resolution authorities to transfer impaired or problem assets to one or more publicly owned asset management vehicles to allow them to be managed with a view to maximizing their value through eventual sale or orderly wind-down (this can be used together with another resolution tool only); and (iv) bail-in - which gives resolution authorities the power to write down certain claims of unsecured creditors of a failing institution and to convert certain unsecured debt claims including ordinary senior debt securities, second ranking senior debt securities and subordinated debt securities to equity (the general bail-in tool), which equity could also be subject to any future application of the general bail-in tool.

Law 11/2015 also provides for the resolution authority as a last resort, after having assessed and exploited the above resolution tools to the maximum extent possible while maintaining financial stability, to be able to provide extraordinary public financial support through additional financial stabilization tools. These consist of the public equity support and temporary public ownership tools. Any such extraordinary financial support must be provided in accordance with the EU state aid framework.

An institution will be considered as failing or likely to fail when: it is, or is likely in the near future to be, in breach of its prudential requirements or any other requirements for continuing authorization; its assets are, or are likely in the near future to be, less than its liabilities; it is, or is likely in the near future to be, unable to pay its debts as they fall due; or it requires extraordinary public financial support (except in limited circumstances).

In addition to the general bail-in tool, the Relevant Resolution Authority has the further power to permanently write-down or convert into equity capital instruments such as the subordinated debt securities of any series at or immediately prior to the point of non-viability and before any other resolution action is taken (non-viability loss absorption). Any shares issued to holders of debt securities of such series upon any such conversion into equity may also be subject to any application of the general bail-in tool.

The powers set out in Law 11/2015 will impact how credit institutions and investment firms are managed as well as, in certain circumstances, the rights of creditors. Holders of the debt securities of any series may be subject to write-down or conversion into equity on any application of the general bail-in tool and, in the case of the subordinated debt securities of any series, non-viability loss absorption, which may result in such holders losing some or all of their investment. The exercise of any power under Law 11/2015 or any suggestion of such exercise could, therefore, materially adversely affect the rights of holders of the debt securities of any series and the price or value of their investment in any series of debt securities.

In addition, in accordance with Article 64.1(i) of Law 11/2015, the Relevant Resolution Authority has the power to alter the amount of interest payable under debt instruments subject to resolution proceedings and the date on which the interest becomes payable under the debt instrument (including the power to suspend payment for a temporary period).



***Under the terms of the debt securities of any series, holders of such securities shall have agreed to be bound by and consent to the exercise of any Bail-in Power by the Relevant Resolution Authority.***

Pursuant to Article 46 of Law 11/2015, which implements Article 55 of the BRRD, subject to limited exceptions, unsecured liabilities of an institution governed by the laws of a third country (which include the debt securities of any series) must contain a contractual acknowledgment whereby the holders recognize that such liability may be subject to the Bail-in Power (as defined below) and agree to be bound by the exercise of those powers by the Relevant Resolution Authority.

Notwithstanding any other term of the debt securities of any series or any other agreements, arrangements, or understandings between Banco Santander and any holder of the debt securities of any series, by its acquisition of the debt securities of any series, each holder (which, for the purposes of this clause, includes each holder of a beneficial interest in the debt securities of any series) acknowledges, accepts, consents to and agrees to be bound by the exercise of any Bail-in Power (as defined herein) by the Relevant Resolution Authority that may result in the write-down or cancellation of all or a portion of the Amounts Due on the debt securities and/or the conversion of all or a portion of the Amounts Due on the debt securities into shares or other securities or other obligations of Banco Santander or another person, including by means of a variation to the terms of the debt securities to give effect to the exercise by the Relevant Resolution Authority of such Bail-in Power. Each holder of the debt securities further acknowledges and agrees that the rights of the holders of the debt securities are subject to—and will be varied, if necessary, so as to give effect to—the exercise of any Bail-in Power by the Relevant Resolution Authority.

For these purposes, the “Amounts Due” are the principal amount of, premium, if any, together with any accrued but unpaid interest, and Additional Amounts, if any, due on the debt securities of any series. References to such amounts will include amounts that have become due and payable, but which have not been paid, prior to the exercise of the Bail-in Power by the Relevant Resolution Authority.

For these purposes, a “Bail-in Power” means any statutory write-down and/or conversion power existing from time to time under any laws, regulations, rules or requirements in effect in the Kingdom of Spain relating to the resolution of Regulated Entities applicable to Banco Santander or other Regulated Entities of the group, including (but not limited to) (i) the transposition of the BRRD (including but not limited to, Law 11/2015, Royal Decree 1012/2015 and any other implementing regulations) as amended or superseded from time to time, (ii) Regulation (EU) No. 806/2014 of the European Parliament and of 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 superseded from time to time, the “SRM Regulation”) and (iii) the instruments, rules and standards created thereunder, pursuant to which any obligation of a Regulated Entity (or an affiliate of such Regulated Entity) can be reduced, cancelled and/or converted into shares or other securities or obligations of such Regulated Entity (or affiliate of such Regulated Entity) or any other person.

“Regulated Entities” means any legal person to which BRRD, as implemented in the Kingdom of Spain (including but not limited to, Law 11/2015, Royal Decree 1012/2015 and any other implementing regulations) as amended or superseded from time to time), the SRM Regulation, or any other Spanish law relating to Bail-in Power, applies, which includes, certain credit entities, investment firms, and certain parent or holding companies.

Any Bail-in Power may be exercised in such a manner as to result in holders of debt securities of the relevant series losing the value of all or a part of their investment in the securities of such series or receiving a different security from the securities of such series, which may be worth significantly less than the securities of such series and which have significantly fewer protections than those typically afforded to those kinds of securities. Moreover, the Relevant Resolution Authority may exercise its authority to implement the Bail-in Power without providing any advance notice to the holders of the debt securities of such series. For more information, see “Description of Debt Securities—Agreement and Acknowledgement with Respect to the Exercise of the Bail-in Power.”



200FX&=8eN3iPp1LZ

***Holders of the debt securities of any series are likely to have limited rights to challenge the exercise of the Bail-in Power by the Relevant Resolution Authority.***

Law 11/2015 contains certain safeguards for creditors in respect of the application of the capital instruments write-down and conversion power and the bail-in tool. With respect to the capital instruments write-down and conversion power, the Relevant Resolution Authority will exercise such power in accordance with the priority of claims under normal insolvency proceedings such that Common Equity Tier 1 items will be written down before Additional Tier 1 and Tier 2 Instruments, successively, are written down or converted into Common Equity Tier 1 instruments. Other than respecting the creditor hierarchy as set out above, the capital instruments write-down and conversion power does not include an express safeguard designed to leave no creditor worse off than in the case of insolvency.

In accordance with Article 48 of Law 11/2015 (and subject to any exclusions that may be applied by the Relevant Resolution Authority under Article 43 of Law 11/2015), in the case of any application of the bail-in tool, the sequence of any resulting write-down or conversion shall be as follows: (i) Common Equity Tier 1 instruments; (ii) the principal amount of Additional Tier 1 Instruments, (iii) the principal amount of Tier 2 Instruments; (iv) other subordinated claims that do not qualify as Additional Tier 1 Instruments or Tier 2 Instruments; and (v) eligible senior liabilities prescribed in Article 41 of Law 11/2015. As a result, Additional Tier 1 Instruments (including the contingent convertible capital securities of any series) will be written down or converted before Tier 2 Instruments or subordinated debt that does not qualify as Additional Tier 1 or Tier 2 Instruments (and any such Tier 2 Instruments or subordinated debt would only be written down or converted if the reduction of Additional Tier 1 Instruments does not sufficiently reduce the aggregate amount of liabilities that must be written down or converted and, accordingly, senior debt instruments (including ordinary senior debt securities and second ranking senior debt securities) would only be written down or converted if the reduction of subordinated instruments does not sufficiently reduce the aggregate amount of liabilities that must be written down or converted). Unlike the capital instruments write-down and conversion power, the bail-in tool contains an express safeguard designed to leave no creditor worse off than in the case of insolvency.

Notwithstanding the above, there may be limited protections, if any, that will be available to holders of securities subject to the Bail-in Power (including the debt securities of any series) and to the broader resolution powers of the Relevant Resolution Authority. Accordingly, holders of debt securities of any series may have limited or circumscribed rights to challenge any decision of the Relevant Resolution Authority to exercise its Bail-in Power.

***The circumstances under which the Relevant Resolution Authority would exercise its Bail-in Power are currently uncertain.***

There remains uncertainty as to how or when the Bail-in Power may be exercised and how it would affect the Group and the debt securities of any series. The determination that all or part of the principal amount of the debt securities of any series will be subject to loss absorption is likely to be inherently unpredictable and may depend on a number of factors which may be outside of Banco Santander's control. Although there are proposed pre-conditions for the exercise of the Bail-in Power, there remains uncertainty regarding the specific factors which the Relevant Resolution Authority would consider in deciding whether to exercise the Bail-in Power with respect to the financial institution and/or securities issued or guaranteed by that institution. In particular, in determining whether an institution is failing or likely to fail, the Relevant Resolution Authority shall consider a number of factors, including, but not limited to, an institution's capital and liquidity position, governance arrangements and any other elements affecting the institution's continuing authorization. Moreover, as the final criteria that the Relevant Resolution Authority would consider in exercising any Bail-in Power is likely to provide it with discretion, holders of debt securities of any series may not be able to refer to publicly available criteria in order to anticipate a potential exercise of any such Bail-in Power. Because of this inherent uncertainty, it will be difficult to predict when, if at all, the exercise of any Bail-in Power, may occur which would result in a principal amount write off or conversion to equity. The uncertainty may adversely affect the value of holders' investments in the debt securities of any series and the price and trading behavior of the debt securities may be affected by the threat of a possible exercise of any power under Law 11/2015 (including any early intervention measure before any resolution) or any suggestion of such exercise, even if the likelihood of such exercise is remote. Moreover, the Relevant Resolution Authority may exercise any such power without providing any advance notice to the holders of debt securities.

In addition, the preparation by the European Banking Authority of certain regulatory technical standards and implementing technical standards to be adopted by the European Commission and certain other guidelines is



pending. These acts could be potentially relevant to determining when or how a Relevant Resolution Authority may exercise the Bail-in Powers. The pending acts include guidelines on the treatment of shareholders in bail-in or the write-down and conversion of capital instruments, and on the rate of conversion of debt to equity in bail-in. No assurance can be given that, once adopted, these standards will not be detrimental to the rights of a holder of debt securities under, and the value of such holder’s investment in, the debt securities of any series.

In addition to the BRRD, it is possible that the application of other relevant laws, the Basel Committee on Banking Supervision package of reforms to the regulatory capital framework for internationally active banks designed, in part, to ensure that capital instruments issued by such banks fully absorb losses before tax payers are exposed to loss (“Basel III Reforms”) and any amendments thereto or other similar regulatory proposals, including proposals by the Financial Stability Board (“FSB”) on cross-border recognition of resolution actions, could be used in such a way as to result in the debt securities of any series absorbing losses in the manner described above. Any actions by the Relevant Resolution Authority pursuant to the powers granted to it by Law 11/2015, or other measures or proposals relating to the resolution of institutions, may adversely affect the rights of holders of the debt securities of any series, the price or value of an investment in the debt securities of such series and/or the Group’s ability to satisfy its obligations under the debt securities of such series.

***Changes in law may adversely affect holders’ rights under the debt securities of any series or may adversely affect the Group’s business, financial performance and capital plans.***

Changes in law after the date hereof may affect holders’ rights under the debt securities of any series as well as the market value of the debt securities of such series. Such changes in law may include changes in statutory, tax and regulatory regimes during the life of the debt securities of any series, or changes that could have a significant impact on the future legal entity structure, business mix (including a potential exit of certain business activities) and management of the Group, and use of capital and requirements for loss-absorbing capacity within the Group, which may have an adverse effect on an investment in the debt securities of such series.

In particular, in relation to the second ranking senior debt securities of any series, on November 23, 2016, the European Commission published proposals for European Directives amending the BRRD and the CRD IV and proposals for European Regulations amending the SRM Regulation and CRR which aim at implementing the TLAC standard and to integrate the TLAC requirement into the general rules on minimum requirement for own funds and eligible liabilities (“MREL”) rules (the “TLAC/MREL Requirements”) thereby avoiding duplication from the application of two parallel requirements (the “European Commission Proposals”). Among other things, the European Commission Proposals propose to amend the BRRD in order to facilitate the creation of a new asset class of “second ranking” senior debt which will be eligible to count as TLAC and MREL (similar to the second ranking senior debt securities). New Spanish legislation could be approved expressly recognizing the possibility that within the class of ordinary claims under Article 89.3 of the Insolvency Law, those that meet certain requirements could be considered of “second ranking” or that different sub-classes are created within such class of ordinary credits.

Moreover, any change in law or regulation that would cause the second ranking senior debt securities of any series to fail to fully qualify as TLAC/MREL Eligible Instruments or subordinated debt securities of any series to be fully excluded (or likely to be fully excluded) from Tier 2 Capital would trigger a TLAC/MREL Disqualification Event or Capital Disqualification Event, respectively, may entitle Banco Santander to redeem the second ranking senior debt securities or subordinated debt securities of such series, as applicable, in whole (but not in part) as more particularly described under “Description of Debt Securities—Redemption and Repurchase—Repurchase of Second Ranking Senior Debt Securities for a TLAC/MREL Disqualification Event” and “Description of Debt Securities—Redemption and Repurchase—Redemption of Subordinated Debt Securities for a Capital Disqualification Event”. In addition, any change in law or regulation that results in Banco Santander having to pay additional amounts to holders of debt securities of any series, or results in certain other tax consequences including (but not limited to) Banco Santander not being entitled to claim a deduction for Spanish tax purposes in respect of interest payments (or the value of such deduction to us being materially reduced), could trigger a tax event, which may entitle the Banco Santander to redeem the debt securities of such series, in whole (but not in part) as more particularly described under “Description of Debt Securities—Redemption and Repurchase—Early Redemption for Taxation Reasons”.

It is not possible to predict whether or not a change in the laws or regulations of Spain, Applicable Banking Regulations or the application or official interpretation thereof, will occur and so lead to the circumstances in which Banco Santander is able to elect to redeem the debt securities of any series, and if so whether or not Banco Santander will elect to exercise such option to redeem the debt securities of such series. There can be no assurances that, in the event of any early redemption, holders of debt securities of any series will be able to reinvest the proceeds at a rate that is equal to the return on the debt securities of such series.



200FX&amp;=eN3io9bL

Such legislative and regulatory uncertainty could also affect holders' ability to accurately value the debt securities of any series and therefore affect the trading price of the debt securities of such series given the extent and impact on the debt securities of such series that one or more regulatory or legislative changes, including those described under “—The circumstances under which the Relevant Resolution Authority would exercise its Bail-in Power are currently uncertain” and “—Holders of the debt securities of any series are likely to have limited rights to challenge the exercise of the Bail-in Power by the Relevant Resolution Authority”, could have on the debt securities of such series.

***Credit ratings may not reflect all risks of an investment in the debt securities, and a downgrade in credit ratings, including as a result of changes in rating agencies' views of the level of implicit sovereign support for European banks, could adversely affect the trading prices of the debt securities.***

Banco Santander's credit ratings may not reflect the potential impact of all risks relating to the market values of the debt securities of any series. However, real or anticipated changes in Banco Santander's credit ratings will generally affect the market values of the debt securities of such series. Credit rating agencies continually revise their ratings for companies that they follow, including Banco Santander, and as such, the credit rating of Banco Santander may be revised, suspended or withdrawn at any time by the assigning rating organization at their sole discretion. In addition, one or more independent credit rating agencies may assign credit ratings to the debt securities of any series.

Any ratings downgrade could adversely affect the trading prices of the debt securities of any series or the trading markets for the debt securities of any series to the extent trading markets for the debt securities of such series develop, and any ratings improvement will not necessarily increase the value of the debt securities of such series and will not reduce market risk and other investment risks related to the debt securities of such series.

Credit ratings may not reflect the potential impact of all risks related to structure and market of the debt securities of any series, and do not address the price, if any, at which the debt securities of any series may be resold prior to maturity (which may be substantially less than the original offering price of the debt securities of such series), and other factors that may affect the value of the debt securities of such series. A credit rating is not a recommendation to buy, sell or hold the debt securities of any series and may be revised or withdrawn by the rating agency at any time.

In general, European regulated investors are restricted under Regulation (EC) No. 1060/2009 (as amended) (the “CRA Regulation”) from using credit ratings for regulatory purposes, unless such ratings are issued by a credit rating agency established in the EU and registered under the CRA Regulation (and such registration has not been withdrawn or suspended). Such general restriction will also apply in the case of credit ratings issued by non-EU credit rating agencies, unless the relevant credit ratings are endorsed by an EU-registered credit rating agency or the relevant non-EU rating agency is certified in accordance with the CRA Regulation (and such endorsement action or certification, as the case may be, has not been withdrawn or suspended). Certain information with respect to the credit rating agencies and ratings will be disclosed in the relevant prospectus supplement.

***The debt securities may not be a suitable investment for investors.***

A prospective investor should determine whether an investment in any series of debt securities is appropriate in his or her particular circumstances after carefully considering, in conjunction with his or her legal, business and tax advisors, the consequences of an investment in the debt securities of such series and the other information set out in this prospectus and the relevant prospectus supplement, to arrive at his or her own evaluation of the investment. Banco Santander does not make any recommendation as to whether any series of debt securities are a suitable investment for any person.

***The debt securities of any series may be redeemed by Banco Santander prior to maturity.***

The debt securities of any series may be redeemable at Banco Santander's option in certain circumstances as described in this prospectus and the relevant prospectus supplement. Banco Santander may choose to redeem the debt securities of such series at times when prevailing interest rates may be relatively low. In such circumstances, an investor may not be able to reinvest the redemption proceeds in a comparable security at an effective interest rate as high as that of the relevant debt securities.





In addition, the ability to redeem the debt securities of any series is likely to limit the market value of the debt securities of such series. During any period when Banco Santander may elect to redeem the debt securities of any series, the market value of the debt securities of such series generally will not rise substantially above the price at which they can be redeemed. This also may be true prior to any redemption period. See “Description of Debt Securities—Redemption and Repurchase” for more information on the circumstances under which the Banco Santander may redeem the debt securities of any series.

***The debt securities of any series are not bank deposits and are not insured or guaranteed by the Federal Deposit Insurance Corporation, the Deposit Insurance Fund, or any other government agency.***

The debt securities of any series are Banco Santander’s obligations but are not bank deposits. In the event of Banco Santander’s insolvency, the debt securities of any series will rank equally with Banco Santander’s other unsecured obligations and will not have the benefit of any insurance or guarantee of the Federal Deposit Insurance Corporation, the Deposit Insurance Fund, or any other government agency.

***There is no restriction under the relevant indentures on the amount or type of further securities or indebtedness which Banco Santander may incur.***

There is no restriction under the relevant indentures on the amount or type of further securities or indebtedness which Banco Santander may issue or incur which ranks senior to, or *pari passu* with, the debt securities of any series. The incurrence of any such further indebtedness may reduce the amount recoverable by holders of debt securities of any series on a liquidation, dissolution or winding-up of Banco Santander in respect of the debt securities of such series and may limit the ability of Banco Santander to meet its obligations in respect of the debt securities of such series, and result in a holder of the debt securities of such series losing all or some of its investment in the debt securities of such series.

**Risks Related to the Ordinary Senior Debt Securities**

***The ordinary senior debt securities of any series are unsecured and are effectively subordinated to Banco Santander’s secured indebtedness.***

The ordinary senior debt securities of any series are unsecured, will be effectively subordinated to all secured indebtedness Banco Santander may incur, to the extent of the assets securing such indebtedness. The relevant indenture relating to Banco Santander’s ordinary senior debt securities does not restrict Banco Santander’s ability to incur secured indebtedness in the future. In the event of Banco Santander’s insolvency, bankruptcy, liquidation, reorganization, dissolution or winding up, to the extent Banco Santander has granted security over Banco Santander’s assets, the assets securing such indebtedness will be used to satisfy the obligations under such indebtedness before Banco Santander can make payments on the ordinary senior debt securities of any series. There may only be limited assets available to make payments on the ordinary senior debt securities of any series in the event of an acceleration of the ordinary senior debt securities of such series and Banco Santander may not have sufficient assets to pay amounts due on any or all of Banco Santander’s ordinary senior debt securities of such series then outstanding.

**Risks Related to the Second Ranking Senior Debt Securities**

***Banco Santander’s obligations under the second ranking senior debt securities of any series are junior to certain obligations.***

Banco Santander’s obligations under the second ranking senior debt securities of any series will be direct, unconditional, unsubordinated and unsecured obligations of Banco Santander according to Article 89.3 of the Spanish Insolvency Law. Upon the insolvency of Banco Santander (and unless they qualify as subordinated claims (*créditos subordinados*) pursuant to Article 92.1° or 92.3° to 92.7° of the Insolvency Law), but subject to any other ranking that may apply as a result of any mandatory provision of law (or otherwise), claims in respect of principal under the second ranking senior debt securities would, save as may be provided by mandatory applicable legislation in relation to creditors, rank (i) within the senior and unsecured liabilities class of Banco Santander (a) junior to the claims in respect of principal under all Senior Higher Priority Liabilities, including claims for principal under the



ordinary senior debt securities, (b) *pari passu* with the claims in respect of principal under any Senior Parity Liabilities and (ii) senior to any present and future subordinated obligations of Banco Santander, including the subordinated debt securities. In addition, if Banco Santander enters into resolution, its eligible liabilities (including the second ranking senior debt securities) will be subject to bail-in, meaning potential write-down or conversion into equity securities or other instruments. The sequence of any resulting write-down or conversion of eligible instruments under Article 48 of the BRRD and Article 48 of Law 11/2015 provides for claims to be written-down or converted into equity in accordance with the hierarchy of claims provided in the Insolvency Law. Because the terms and conditions of the second ranking senior debt securities provide that they are Second Ranking Senior Liabilities Banco Santander expects them to be written down or converted in full after any subordinated obligations of Banco Santander under Article 92 of the Insolvency Law and before any of Banco Santander's Senior Higher Priority Liabilities (as defined below) are written down or converted. Although second ranking senior debt securities may pay a higher rate of interest than comparable debt securities which qualify as Senior Higher Priority Liabilities, holders of the second ranking senior debt securities of any series are more at risk than holders of Senior Higher Priority Liabilities of losing all or some of their investment should Banco Santander become insolvent.

Banco Santander's Senior Higher Priority Liabilities would include, among other liabilities, its deposit obligations (other than deposit obligations qualifying as preferred liabilities (*créditos con privilegio general*) under Law 11/2015), its obligations in respect of derivatives and other financial contracts and its unsecured and unsubordinated debt securities that are not expressed to rank *pari passu* with the second ranking senior debt securities or other Senior Parity Liabilities. If Banco Santander were wound up, liquidated or dissolved, it expects that a liquidator would apply the assets which are available to satisfy all claims ahead of the holders of second ranking senior debt securities, including holders of Senior Higher Priority Liabilities, and then to satisfy claims in respect of the second ranking senior debt securities (and other Senior Parity Liabilities). If Banco Santander were not to have sufficient assets to settle claims of higher ranking creditors in full, the claims of the holders under the second ranking senior debt securities would not be satisfied.

***The second ranking senior debt securities provide for limited events of default.***

Holders have no ability to accelerate the maturity of their second ranking senior debt securities. The terms and conditions of the second ranking senior debt securities do not provide for any events of default, except in the case that an order is made by any competent court for Banco Santander's winding up or dissolution. Accordingly, in the event that any payment on the second ranking senior debt securities of any series is not made when due, each holder of such series will have a claim only for amounts then due and payable on their second ranking senior debt securities.

***The second ranking senior debt securities of any series may be subject to substitution and/or variation without a holder's consent***

Subject as provided herein, in particular under "Description of Debt Securities—Substitution and Variation", if a TLAC/MREL Disqualification Event, an Alignment Event or a tax event that would entitle Banco Santander to redeem the debt securities as set forth under "Description of Debt Securities —Redemption and Repurchase—Early Redemption for Taxation Reasons" occurs, Banco Santander may, at its option, and without the consent or approval of the holders of the second ranking senior debt securities of such series, elect either (i) to substitute all (but not some only) of the second ranking senior debt securities of such series or (ii) to modify the terms of all (but not some only) of the second ranking senior debt securities of such series, in each case so that they are substituted for, or varied to, become, or remain, Qualifying Notes. While Qualifying Notes generally must contain terms that are materially no less favorable to holders of the second ranking senior debt securities of such series as the original terms of the second ranking senior debt securities of such series, there can be no assurance that the terms of any Qualifying Notes will be viewed by the market as equally favorable, or that the Qualifying Notes will trade at prices that are equal to the prices at which the second ranking senior debt securities of such series would have traded on the basis of their original terms.

Further, prior to the making of any such substitution or variation, Banco Santander, shall not be obliged to have regard to the tax position of individual holders of the second ranking senior debt securities of such series or to the tax consequences of any such substitution or variation for any such individual holder. No holder of the second ranking senior debt securities of such series shall be entitled to claim, whether from the Trustee, Banco Santander, or any other person, any indemnification or payment in respect of any tax consequence of any such substitution or variation upon an individual holder of the second ranking senior debt securities of such series.



***The qualification of the second ranking senior debt securities as TLAC/MREL Eligible Instruments is subject to uncertainty***

The second ranking senior debt securities are intended to be TLAC/MREL-Eligible Instruments under the Applicable TLAC/MREL Regulations. However, there is uncertainty regarding the final substance of the Applicable TLAC/MREL Regulations and how those regulations, once enacted, are to be interpreted and applied, and Banco Santander cannot provide any assurance that the second ranking senior debt securities will be (or thereafter remain) TLAC/MREL-Eligible Instruments.

There currently are no European laws or regulations implementing the TLAC concept, which is set forth in the FSB TLAC Term Sheet. The European Commission has recently proposed directives and regulations intended to give effect to the FSB TLAC Term Sheet and to modify the requirements for MREL eligibility. While the terms of the second ranking senior debt securities may be consistent with the European Commission Proposals, these proposals have not yet been interpreted and when finally adopted the final Applicable TLAC/MREL Regulations may be different from those set forth in these proposals.

Because of the uncertainty surrounding the substance of the final regulations implementing the TLAC requirements and their interpretation and application and any potential changes to the regulations giving effect to MREL, Banco Santander cannot provide any assurance that the second ranking senior debt securities will ultimately be TLAC/MREL-Eligible Instruments. If for any reasons they are not TLAC/MREL-Eligible Instruments or if they initially are TLAC/MREL-Eligible Instruments and subsequently become ineligible due to a change in Spanish law or Applicable TLAC/MREL Regulations, then a TLAC/MREL Disqualification Event will occur.

***The second ranking senior debt securities may be redeemed prior to maturity upon the occurrence of a TLAC/MREL Disqualification Event***

Banco Santander may, at its option, redeem all, but not some only, of the second ranking senior debt securities, at any time at their early redemption amount, together with accrued but unpaid interest up to (but excluding) the date of redemption, upon or following the occurrence of a TLAC/MREL Disqualification Event.

The early redemption of the second ranking senior debt securities may be subject to the prior consent of the Relevant Resolution Authority if and as required therefor under Applicable Banking Regulations and may only take place in accordance with Applicable Banking Regulations in force at the relevant time.

The proposal for a regulation amending CRR published by the European Commission on 23 November 2016 (the “Proposed CRR Amendment”) provides that the redemption of eligible liabilities prior to the date of their contractual maturity is subject to the prior permission of the competent authority. According to this proposal, such consent will be given only if either of the following conditions are met:

- (i) on or before such redemption, the institution replaces the instruments with own funds or eligible liabilities instruments of equal or higher quality at terms that are sustainable for the income capacity of the institution; or
- (ii) the institution has demonstrated to the satisfaction of the competent authority that the own funds and eligible liabilities of the institution would, following such redemption, exceed the requirements laid down in the CRR, the CRD IV and the BRRD by a margin that the competent authority considers necessary.

It is not possible to predict whether or not the second ranking senior debt securities will qualify as TLAC/MREL-Eligible Instruments (see “*The qualification of the second ranking senior debt securities as TLAC/MREL-Eligible Instruments is subject to uncertainty*”) or if any further change in the laws or regulations of Spain, Applicable Banking Regulations, Applicable TLAC/MREL Regulations or in the application or official interpretation thereof will occur and so lead to the circumstances in which Banco Santander is able to elect to redeem the second ranking senior debt securities, and if so whether or not Banco Santander will elect to exercise such option to redeem the second ranking senior debt securities or any prior consent of the Relevant Resolution Authority, if required, will be given.

***Second ranking senior debt securities are new types of instruments for which there is little trading history***

As at the date of this Prospectus, other than Banco Santander, Spanish financial institutions have not issued any second ranking senior debt securities. Accordingly, there is little trading history for securities of Spanish financial



institutions with this ranking. Market participants, including credit rating agencies, are in the initial stages of evaluating the risks associated with Second Ranking Senior Liabilities. The credit ratings assigned to second ranking senior debt securities such as the second ranking senior debt securities may change as the rating agencies refine their approaches, and the value of such securities may be particularly volatile as the market becomes more familiar with them. It is possible that, over time, the credit ratings and value of Second Ranking Senior Liabilities such as the second ranking senior debt securities will be lower than those expected by investors at the time of issuance of the second ranking senior debt securities. If so, holders of second ranking senior debt securities may incur losses in respect of their investments in the second ranking senior debt securities.

### **Risks Related to the Subordinated Debt Securities**

***Banco Santander's obligations under the subordinated debt securities of any series are subordinated to existing and future senior indebtedness.***

Banco Santander's obligations under the subordinated debt securities of any series will be unsecured and subordinated and will rank junior in priority of payment to all unsubordinated obligations of Banco Santander and to all subordinated obligations of Banco Santander not qualifying as Tier 1 or Tier 2 Capital. Although subordinated debt securities may pay a higher rate of interest than comparable debt securities which are not subordinated, there is a greater risk that holders of the subordinated debt securities of any series will lose all or some of their investment should Banco Santander become insolvent.

***The subordinated debt securities provide for limited events of default.***

Holders have no ability to accelerate the maturity of their subordinated debt securities. The terms and conditions of the subordinated debt securities do not provide for any events of default, except in the case that an order is made by any competent court for Banco Santander's winding up or dissolution. Accordingly, in the event that any payment on the subordinated debt securities of any series is not made when due, each holder of such series will have a claim only for amounts then due and payable on their subordinated debt securities and a right to institute proceedings for the winding up or dissolution of Banco Santander.

***The subordinated debt securities of any series may be subject to substitution and/or variation without a holder's consent***

Subject as provided herein, in particular under "Description of Debt Securities—Substitution and Variation", if a Capital Disqualification Event or a tax event that would entitle Banco Santander to redeem the debt securities as set forth under "Description of Debt Securities —Redemption and Repurchase—Early Redemption for Taxation Reasons" occurs, Banco Santander may, at its option, and without the consent or approval of the holders of the subordinated debt securities of such series, elect either (i) to substitute all (but not some only) of the subordinated debt securities of such series or (ii) to modify the terms of all (but not some only) of the subordinated debt securities of such series, in each case so that they are substituted for, or varied to, become, or remain, Qualifying Notes. While Qualifying Notes generally must contain terms that are materially no less favorable to holders of the subordinated debt securities of such series as the original terms of the subordinated debt securities of such series, there can be no assurance that the terms of any Qualifying Notes will be viewed by the market as equally favorable, or that the Qualifying Notes will trade at prices that are equal to the prices at which the subordinated debt securities of such series would have traded on the basis of their original terms.

Further, prior to the making of any such substitution or variation, Banco Santander, shall not be obliged to have regard to the tax position of individual holders of the subordinated debt securities of such series or to the tax consequences of any such substitution or variation for any such individual holder. No holder of the subordinated debt securities of such series shall be entitled to claim, whether from the Trustee, Banco Santander, or any other person, any indemnification or payment in respect of any tax consequence of any such substitution or variation upon an individual holder of the subordinated debt securities of such series.



**Risks Relating to the Contingent Convertible Capital Securities**

***The contingent convertible capital securities of any series are subject to certain provisions of the laws of the Kingdom of Spain and their official interpretation, which may change and have a material adverse effect on the terms and market value of the contingent convertible capital securities of such series.***

Changes in the laws of Spain or their official interpretation by regulatory authorities such as Banco Santander of Spain or the European Central Bank after the date hereof may affect the rights and effective remedies of holders of any series of contingent convertible capital securities as well as the market value of the contingent convertible capital securities of such series.

Such changes in law may include changes in statutory, tax and regulatory regimes during the life of the contingent convertible capital securities of such series, which may have an adverse effect on investment in the contingent convertible capital securities of such series. They could also include the introduction of a variety of further statutory resolution, loss-absorption and bail-in measures and tools, which may affect the rights of holders of obligations issued by Banco Santander, including the contingent convertible capital securities of any series.

Although the CRR is directly applicable in each Member State, it has left a number of important interpretational issues to be resolved through binding technical standards not all of which have already been adopted, and the CRD IV Directive has left certain other matters to the discretion of the relevant regulator (although within the SSM the aforementioned ECB Regulation and Guidelines on national options and discretions apply, thus reducing the level of uncertainty).

Any such changes (including those which may result from the publication of the technical standards which interpret CRR), as well as the European Commission Proposals (particularly those regarding the CRR/CRDIV package) could impact the calculation of the CET1 ratio or the CET1 Capital of Banco Santander or the Group or the Risk Weighted Assets Amount. Furthermore, because the occurrence of the Trigger Event depends, in part, on the calculation of these ratios and capital measures, any change in Spanish law that could affect the calculation of such ratios and measures could also affect the determination of whether the Trigger Event has actually occurred.

Such calculations may also be affected by changes in applicable accounting rules, the accounting policies of Banco Santander and the Group and the application by Banco Santander and the Group of these policies. Any such changes, including changes over which Banco Santander or the Group has a discretion, may have a material adverse impact on the reported financial position of Banco Santander or the Group and accordingly may give rise to the occurrence of the Trigger Event in circumstances where such Trigger Event may not otherwise have occurred, notwithstanding the adverse impact this will have for holders of any series of contingent convertible capital securities.

Furthermore, any change in the laws or regulations of Spain, Applicable Banking Regulations or any change in the application or official interpretation thereof may in certain circumstances result in Banco Santander having the option to redeem the contingent convertible capital securities of any series in whole but not in part. In any such case, the contingent convertible capital securities of such series would cease to be outstanding, which could materially and adversely affect investors and frustrate investment strategies and goals.

Such legislative and regulatory uncertainty could affect an investor’s ability to value the contingent convertible capital securities accurately and therefore affect the market price of the contingent convertible capital securities of such series given the extent and impact on the contingent convertible capital securities of such series of one or more regulatory or legislative changes.

***Banco Santander will be restricted from making payments of Distributions on the contingent convertible capital securities in certain circumstances, in which case Banco Santander will cancel such Distributions, and holders of contingent convertible capital securities of any series may not be able to anticipate whether or not Banco Santander will cancel such Distributions.***

Under Article 141 of the CRD IV Directive, Member States of the European Union must require that institutions that fail to meet the “combined buffer requirement” (broadly, the combination of the capital conservation buffer, the institution-specific counter-cyclical buffer and the higher of (depending on the institution), the systemic risk buffer, the global systemically important institutions buffer and the other systemically important institution buffer, in each case as applicable to the institution) will be prohibited from paying any “discretionary payments”



(which are defined broadly by the CRD IV Directive as payments relating to Common Equity Tier 1, variable remuneration and payments on Additional Tier 1 Instruments such as the contingent convertible capital securities of any series), until it calculates its applicable restrictions and communicates them to the Regulator and, once done, such institution will be subject to restricted “discretionary payments”.

The restrictions will be scaled according to the extent of the breach of the “combined buffer requirement” and calculated as a percentage of the profits of the institution since the last distribution of profits or “discretionary payment”. Such calculation will result in a “Maximum Distributable Amount” in each relevant period. As an example, the scaling is such that in the bottom quartile of the “combined buffer requirement”, no “discretionary distributions” will be permitted to be paid. As a consequence, in the event of breach of the combined buffer requirement it may be necessary to reduce discretionary payments, including potentially exercising Banco Santander’s discretion to cancel (in whole or in part) payments of Distributions in respect of the contingent convertible capital securities of any series.

Articles 43 to 49 of Law 10/2014 and Chapter II of Title II of Royal Decree 84/2015 implement the above provisions in Spain. In particular Article 48 of Law 10/2014 and Articles 73 and 74 of Royal Decree 84/2014 deal with restrictions on distributions and Article 24 of Circular 2/2016 of Banco Santander of Spain.

On November 9, 2015 the FSB published its final Total Loss-Absorbing Capacity (“TLAC”) Principles and Term Sheet, proposing that G-SIIs maintain significant minimum amounts of liabilities that are subordinated (by law, contract or structurally) to certain prior ranking liabilities, such as guaranteed insured deposits, and which forms a new standard for G-SIIs. The TLAC Principles and Term Sheet contains a set of principles on loss absorbing and recapitalization capacity of G-SIIs in resolution and a term sheet for the implementation of these principles in the form of an internationally agreed standard. The FSB will undertake a review of the technical implementation of the TLAC Principles and Term Sheet by the end of 2019. The TLAC Principles and Term Sheet require a minimum TLAC requirement to be determined individually for each G-SIB at the greatest of (a) 16% of risk weighted assets as of January 1, 2019 and 18% as of January 1, 2022, and (b) 6% of the Basel III Tier 1 leverage ratio requirement as of January 1, 2019, and 6.75% as of January 1, 2022. As of the date of this Prospectus, Banco Santander is classified as a G-SII by the FSB and therefore the EU implementation of the TLAC requirement will create additional minimum capital requirements for Banco Santander.

The European Commission Proposals aim at integrating the TLAC requirement into the general MREL rules thereby avoiding duplication from the application of two parallel requirements, See *“Risks Relating to the Debt Securities—Changes in law may adversely affect holders’ rights under the debt securities of any series or may adversely affect the Group’s business, financial performance and capital plans”*. Pursuant to such proposal, the TLAC requirement would be implemented as a “Pillar 1” MREL requirement for G-SIIs, which would remain subject to potential additional “Pillar 2” add-on MREL requirements (which would be institution-specific and based on the relevant resolvability analysis). Consequently, if the Relevant Spanish Resolution Authority finds that any obstacles to resolvability by Banco Santander and/or the Group could exist, a higher MREL requirement could be imposed.

The BRRD and the Commission Delegated Regulation (EU) No. 2016/1450 do not provide details on the implications of a failure by an institution to comply with its MREL requirement. However, pursuant to the European Commission Proposals, and in line with the FSB standard on TLAC, in case a bank does not have sufficient amount of eligible liabilities to comply with its MREL, the resultant shortfall would automatically be filled up with CET1 that, until that moment, was counted towards meeting the combined capital buffer requirement. In turn, this may lead to a breach of the combined capital buffer requirement, triggering a limit of discretionary payments to the holders of regulatory capital instruments and employees.

In addition, in accordance with Article 64.1.(i) of Law 11/2015, the Relevant Resolution Authority has the power to alter the amount of distributions or interest payable under debt instruments issued by banks subject to resolution proceedings and the date on which the distributions or interest becomes payable under the debt instrument (including the power to suspend payment for a temporary period). In addition, the European Central Bank also has the power under Article 68.2(i) of Law 10/2014 (implementing Article 104 of CRD IV) to impose in certain circumstances requirements on Banco Santander, the effect of which will be to restrict or prohibit payments of Distributions by Banco Santander to holders of the contingent convertible capital securities of any series, which is most likely to materialize if at any time Banco Santander is failing, or is expected to fail, to meet its capital requirements.



Moreover, Banco Santander’s capital requirements, are, by their nature, calculated by reference to a number of factors any one of which or combination of which may not be easily observable or capable of calculation by investors. Investors may not be able to predict accurately the proximity of the risk of discretionary payments on the contingent convertible capital securities of any series being prohibited from time to time as a result of the operation of Article 48 of Law 10/2014. There can be no assurance that any of the capital requirements or capital buffer requirements applicable to Banco Santander will not be amended in the future to include new and more onerous capital requirements, which in turn may affect Banco Santander’s capacity to make payments of Distributions on the contingent convertible capital securities of any series. See “—*Payments of Distributions on the contingent convertible capital securities of any series are payable in Banco Santander’s sole and absolute discretion and Banco Santander may (and in certain circumstances will have no choice but to) cancel any Distributions in whole or in part at any time. Unpaid Distributions are not cumulative or payable at any time thereafter and holders of contingent convertible capital securities of such series shall have no rights thereto.*”

***Law 11/2015 enables a range of actions to be taken in relation to credit institutions and investment firms considered to be at risk of failing. The taking of any action under Law 11/2015 could materially affect the value of any contingent convertible capital securities.***

Law 11/2015 contains four resolution tools and powers which may be used alone or in combination where the Relevant Resolution Authority considers that (a) an institution is failing or likely to fail, (b) there is no reasonable prospect that any alternative private sector measures would prevent the failure of such institution within a reasonable timeframe, and (c) a resolution action is in the public interest: (i) sale of business - which enables resolution authorities to direct the sale of the firm or the whole or part of its business on commercial terms; (ii) bridge institution - which enables resolution authorities to transfer all or part of the business of the firm to a “bridge institution” (an entity created for this purpose that is wholly or partially in public control); (iii) asset separation - which enables resolution authorities to transfer impaired or problem assets to one or more publicly owned asset management vehicles to allow them to be managed with a view to maximizing their value through eventual sale or orderly wind-down (this can be used together with another resolution tool only); and (iv) bail-in - which gives resolution authorities the power to write down certain claims of unsecured creditors of a failing institution and to convert certain unsecured debt claims including contingent convertible capital securities to equity (the general bail-in tool), which equity could also be subject to any future application of the general bail-in tool. Law 11/2015 provides that the general bail-in tool shall be applied from January 1, 2016.

Law 11/2015 also provides for the resolution authority as a last resort, after having assessed and exploited the above resolution tools to the maximum extent possible while maintaining financial stability, to be able to provide extraordinary public financial support through additional financial stabilization tools. These consist of the public equity support and temporary public ownership tools. Any such extraordinary financial support must be provided in accordance with the EU state aid framework.

An institution will be considered as failing or likely to fail when: it is, or is likely in the near future to be, in breach of its prudential requirements or any other requirements for continuing authorization; its assets are, or are likely in the near future to be, less than its liabilities; it is, or is likely in the near future to be, unable to pay its debts as they fall due; or it requires extraordinary public financial support (except in limited circumstances).

In addition to the general bail-in tool, the Relevant Resolution Authority has the further power to permanently write-down or convert into equity capital instruments such as the contingent convertible capital securities of any series at or immediately prior to the point of non-viability and before any other resolution action is taken (non-viability loss absorption). Any shares issued to holders of contingent convertible capital securities of such series upon any such conversion into equity may also be subject to any application of the general bail-in tool.

The powers set out in Law 11/2015 will impact how credit institutions and investment firms are managed as well as, in certain circumstances, the rights of creditors. Holders of the contingent convertible capital securities of any series may be subject to write-down or conversion into equity on any application of the general bail-in tool and to non-viability loss absorption, which may result in such holders losing some or all of their investment. The exercise of any power under Law 11/2015 or any suggestion of such exercise could, therefore, materially adversely affect the rights of holders of the contingent convertible capital securities of any series and the price or value of their investment in any series of contingent convertible capital securities.



200FX&=8eN3n3gKLh

***Under the terms of the contingent convertible capital securities of any series, holders of contingent convertible capital securities of such series shall have agreed to be bound by the exercise of any Bail-in Power by the Relevant Resolution Authority.***

Pursuant to Article 46 of Law 11/2015, which implements Article 55 of the BRRD, subject to limited exceptions, unsecured liabilities of an institution governed by the laws of a third-country (which include the contingent convertible capital securities of any series) must contain a contractual acknowledgment whereby the holders recognize that such liability may be subject to the Bail-in Power and agree to be bound by the exercise of those powers by the Relevant Resolution Authority.

Notwithstanding any other term of the contingent convertible capital securities of any series or any other agreements, arrangements, or understandings between Banco Santander and any holder of the contingent convertible capital securities of any series, by its acquisition of the contingent convertible capital securities of any series, each holder (which, for the purposes of this clause, includes each holder of a beneficial interest in the contingent convertible capital securities of any series) acknowledges, accepts, consents to and agrees to be bound by the exercise of any Bail-in Power (as defined herein) by the Relevant Resolution Authority that may result in the write-down or cancellation of all or a portion of the Amounts Due on the contingent convertible capital securities and/or the conversion of all or a portion of the Amounts Due on the contingent convertible capital securities into shares or other securities or other obligations of Banco Santander or another person, including by means of a variation to the terms of the contingent convertible capital securities to give effect to the exercise by the Relevant Resolution Authority of such Bail-in Power. Each holder of the contingent convertible capital securities further acknowledges and agrees that the rights of the holders of the contingent convertible capital securities are subject to—, and will be varied, if necessary, so as to give effect to—, the exercise of any Bail-in Power by the Relevant Resolution Authority.

For these purposes, the “Amounts Due” are the Liquidation Preference, together with any accrued but unpaid Distributions, if any, and Additional Amounts, if any, due on the contingent convertible capital securities of any series. References to such amounts will include amounts that have become due and payable, but which have not been paid, prior to the exercise of the Bail-in Power by the Relevant Resolution Authority.

For these purposes, a “Bail-in Power” means any statutory write-down and/or conversion power existing from time to time under any laws, regulations, rules or requirements in effect in the Kingdom of Spain relating to the resolution of Regulated Entities applicable to Banco Santander or other Regulated Entities of the group, including (but not limited to) (i) the transposition of the BRRD (including but not limited to, Law 11/2015, Royal Decree 1012/2015 and any other implementing regulations) as amended or superseded from time to time, (ii) Regulation (EU) No. 806/2014 of the European Parliament and of 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 superseded from time to time, the “SRM Regulation”) and (iii) the instruments, rules and standards created thereunder, pursuant to which any obligation of a Regulated Entity (or an affiliate of such Regulated Entity) can be reduced, cancelled and/or converted into shares or other securities or obligations of such Regulated Entity (or affiliate of such Regulated Entity) or any other person.

“Regulated Entities” means any legal person to which BRRD, as implemented in the Kingdom of Spain (including but not limited to, Law 11/2015, Royal Decree 1012/2015 and any other implementing regulations) as amended or superseded from time to time), the SRM Regulation, or any other Spanish law relating to Bail-in Power, applies, which includes, certain credit entities, investment firms, and certain parent or holding companies.

Any Bail-in Power may be exercised in such a manner as to result in holders of contingent convertible capital securities of the relevant series losing the value of all or a part of their investment in the contingent convertible capital securities of such series or receiving a different security from the contingent convertible capital securities of such series, which may be worth significantly less than the contingent convertible capital securities of such series and which have significantly fewer protections than those typically afforded to debt securities. Moreover, the Relevant Resolution Authority may exercise its authority to implement the Bail-in Power without providing any advance notice to the holders of the contingent convertible capital securities of such series. For more information, see “Description of Contingent Convertible Capital Securities—Agreement and Acknowledgement with Respect to the Exercise of the Bail-in Power”.





200FX&=eN3k3Pfl0

***Holders of contingent convertible capital securities of any series are likely to have limited rights to challenge the exercise of the Bail-in Power by the Relevant Resolution Authority.***

Law 11/2015 contains certain safeguards for creditors in respect of the application of the capital instruments write-down and conversion power and the bail-in tool. With respect to the capital instruments write-down and conversion power, the Relevant Resolution Authority will exercise such power in accordance with the priority of claims under normal insolvency proceedings such that Common Equity Tier 1 items will be written down before Additional Tier 1 and Tier 2 Instruments, successively, are written down or converted into Common Equity Tier 1 instruments. Other than respecting the creditor hierarchy as set out above, the capital instruments write-down and conversion power does not include an express safeguard designed to leave no creditor worse off than in the case of insolvency.

In accordance with Article 48 of Law 11/2015 (and subject to any exclusions that may be applied by the Relevant Resolution Authority under Article 43 of Law 11/2015), in the case of any application of the bail-in tool, the sequence of any resulting write-down or conversion shall be as follows: (i) Common Equity Tier 1 instruments; (ii) the principal amount of Additional Tier 1 Instruments, (iii) the principal amount of Tier 2 Instruments; (iv) other subordinated claims that do not qualify as Additional Tier 1 Instruments or Tier 2 Instruments; and (v) eligible senior claims. As a result, Additional Tier 1 Instruments (including the contingent convertible capital securities of any series) will be written down or converted before Tier 2 Instruments or subordinated debt that does not qualify as Additional Tier 1 or Tier 2 Instruments (and any such Tier 2 Instruments or subordinated debt would only be written down or converted if the reduction of Additional Tier 1 Instruments does not sufficiently reduce the aggregate amount of liabilities that must be written down or converted). Unlike the capital instruments write-down and conversion power, the bail-in tool contains an express safeguard designed to leave no creditor worse off than in the case of insolvency. The price and trading behavior of the contingent convertible capital securities of any series may be affected by the threat of a possible exercise of any power under Law 11/2015 (including any early intervention measure before any resolution) or any suggestion of such exercise, even if the likelihood of such exercise is remote. Moreover, the Relevant Resolution Authority may exercise any such power without providing any advance notice to the holders.

Notwithstanding the above, there may be limited protections, if any, that will be available to holders of securities subject to the Bail-in Power (including the contingent convertible capital securities of any series) and to the broader resolution powers of the Relevant Resolution Authority. Accordingly, holders of contingent convertible capital securities of any series may have limited or circumscribed rights to challenge any decision of the Relevant Resolution Authority to exercise its Bail-in Power.

***The circumstances under which the Relevant Resolution Authority would exercise its Bail-in Power are currently uncertain.***

There remains uncertainty as to how or when the Bail-in Power may be exercised and how it would affect the Group and the contingent convertible capital securities of any series. The determination that all or part of the Liquidation Preference of the contingent convertible capital securities of any series will be subject to loss absorption is likely to be inherently unpredictable and may depend on a number of factors which may be outside of Banco Santander's control. Although there are proposed pre-conditions for the exercise of the Bail-in Power, there remains uncertainty regarding the specific factors which the Relevant Resolution Authority would consider in deciding whether to exercise the Bail-in Power with respect to the relevant institution and/or securities, such as the contingent convertible capital securities of any series, issued by that institution. In particular, in determining whether an institution is failing or likely to fail, the Relevant Resolution Authority shall consider a number of factors, including, but not limited to, an institution's capital and liquidity position, governance arrangements and any other elements affecting the institution's continuing authorization. Moreover, as the final criteria that the Relevant Resolution Authority would consider in exercising any Bail-in Power is likely to provide it with discretion, holders of contingent convertible capital securities of any series may not be able to refer to publicly available criteria in order to anticipate a potential exercise of any such Bail-in Power. Because of this inherent uncertainty, it will be difficult to predict when, if at all, the exercise of any Bail-in Power by the Relevant Resolution Authority, may occur which would result in a Liquidation Preference write off or conversion to equity. The uncertainty may adversely affect the value of holders' investments in the contingent convertible capital securities of any series.



In addition, the preparation by the European Banking Authority of certain regulatory technical standards and implementing technical standards to be adopted by the European Commission and certain other guidelines is pending. These standards could be potentially relevant to determining when or how a Relevant Resolution Authority may exercise the Bail-in Power. The pending standards include guidelines on the treatment of shareholders in bail-in or the write-down and conversion of capital instruments, and on the rate of conversion of debt to equity in bail-in. Once adopted, these standards may be detrimental to the rights of a holder under, and the value of a holder’s investment in, the contingent convertible capital securities of any series. In addition to the BRRD, it is possible that the application of other relevant laws, Basel III Reforms and any amendments thereto or other similar regulatory proposals, including proposals by the FSB on cross-border recognition of resolution actions, could be used in such a way as to result in the contingent convertible capital securities of any series absorbing losses in the manner described above. Any actions by the Relevant Resolution Authority pursuant to the powers granted to it by Law 11/2015, or other measures or proposals relating to the resolution of institutions, may adversely affect the rights of holders of the contingent convertible capital securities of any series, the price or value of an investment in the contingent convertible capital securities of such series and/or the Group’s ability to satisfy its obligations under the contingent convertible capital securities of such series.

***The contingent convertible capital securities are irrevocably and mandatorily convertible into newly issued Common Shares in certain prescribed circumstances, and as a result, holders of contingent convertible capital securities of any series could lose all or part of their investment in the contingent convertible capital securities of such series.***

Upon the occurrence of the Trigger Event, the contingent convertible capital securities of any series will be irrevocably and mandatorily (and without any requirement for the consent or approval of holders of the contingent convertible capital securities of such series) converted into newly issued Common Shares. Because the Trigger Event will occur when the CET1 ratio of Banco Santander and/or the Group, as applicable, will have deteriorated significantly, the resulting Trigger Event will likely be accompanied by a prior deterioration in the market price of the Common Shares, which may be expected to continue after announcement of the Trigger Event.

Therefore, in the event of the occurrence of the Trigger Event, the Current Market Price of a Common Share may be below the Floor Price, and investors could receive Common Shares at a time when the market price of the Common Shares is considerably less than the Conversion Price. In addition, there may be a delay in a holder of contingent convertible capital securities receiving its Common Shares following the Trigger Event, during which time the market price of the Common Shares may fall further. As a result, the value of the Common Shares received on conversion following the Trigger Event could be substantially lower than the price paid for the contingent convertible capital securities at the time of their purchase.

Accordingly, an investor in the contingent convertible capital securities of any series faces almost the same risk of loss as an investor in the Common Shares in the event of the Trigger Event. See also “—*Holders of the contingent convertible capital securities of any series will bear the risk of fluctuations in the price of the Common Shares and/or movements in any ratio that could give rise to the occurrence of a Trigger Event. Holders of the contingent convertible capital securities of any series will also bear the risk of changes in the U.S. dollar and euro exchange rate.*” below.

***A capital reduction may take place in accordance with the Spanish Companies Law.***

In accordance with Article 418.3 of the Spanish Companies Law, in the event that Banco Santander intends to approve a capital reduction by reimbursement of contributions (*restitución de aportaciones*) to shareholders, holders of contingent convertible capital securities of any series will be entitled to convert the contingent convertible capital securities of such series into Common Shares at the applicable Conversion Price prior to the execution of such capital reduction. A resolution of capital reduction for the redemption of any Common Shares previously repurchased by Banco Santander will not be considered a capital reduction for these purposes.



***The circumstances that may give rise to the Trigger Event are inherently unpredictable and may be caused by factors outside of Banco Santander's control. Banco Santander has no obligation to operate its business in such a way, or take any mitigating actions, to maintain or restore its CET1 ratio to avoid a Trigger Event and any actions Banco Santander may take now or in the future could result in its CET1 ratio failing.***

The occurrence of the Trigger Event is inherently unpredictable and depends on a number of factors, many of which are outside of Banco Santander's control. For example, the occurrence of one or more of the risks described under "Risk Factors" in Banco Santander's Annual Report on Form 20-F for the year ended December 31, 2016, or the deterioration of the circumstances described therein, could substantially increase the likelihood of the occurrence of the Trigger Event. Furthermore, the occurrence of the Trigger Event depends, in part, on the calculation of the CET1 ratio, which can be affected, among other things, by the growth of the business and future earnings of Banco Santander and/or the Group, as applicable; expected payments by Banco Santander in respect of dividends and Distributions and other equivalent payments in respect of instruments ranking junior to the contingent convertible capital securities of any series as well as other Parity Securities; regulatory changes (including possible changes in regulatory capital definitions, calculations and risk weighted assets), Banco Santander's ability to actively manage the risk weighted assets of Banco Santander and the Group and changes in applicable accounting rules, or any changes to regulatory adjustments which modify the regulatory capital impact of accounting rules. In addition, since the Regulator may require Banco Santander to calculate the CET1 ratio at any time, the Trigger Event could occur at any time.

Due to the inherent uncertainty in determining whether the Trigger Event may exist, it will be difficult to predict when, if at all, the contingent convertible capital securities of any series will be converted into Common Shares. Accordingly, trading behavior in respect of the contingent convertible capital securities of any series is not necessarily expected to follow trading behavior associated with other types of convertible or exchangeable securities. Any indication that Banco Santander and/or the Group, as applicable, is trending towards the Trigger Event can be expected to have an adverse effect on the market price and liquidity of the contingent convertible capital securities of such series and on the price of the Common Shares. Under such circumstances, investors may not be able to sell the contingent convertible capital securities of such series or at prices comparable to other similar yielding instruments. In addition, the risk of Trigger Conversion could drive down the price of Banco Santander's Common Shares and therefore have a material adverse effect on the market value of any Common Shares received upon Trigger Conversion.

***Holders of the contingent convertible capital securities of any series will bear the risk of fluctuations in the price of the Common Shares and and/or movements in any ratio that could give rise to the occurrence of the Trigger Event. Holders of the contingent convertible capital securities of any series will also bear the risk of changes in the U.S. dollar and euro exchange rate.***

The market price of the contingent convertible capital securities of any series is expected to be affected by fluctuations in the market price of the Common Shares, in particular if at any time there is a significant deterioration in any of the ratios by reference to which the determination of any occurrence of the Trigger Event is made, and it is impossible to predict whether the price of the Common Shares will rise or fall. Market prices of the Common Shares will be influenced by, among other things, the financial position of the Group, the results of operations and political, economic, financial and other factors. Any decline in the market price of the Common Shares or any indication that a ratio is trending towards occurrence of the Trigger Event may have an adverse effect on the market price of the contingent convertible capital securities of any series. The level of each ratio specified in the definition of Trigger Event may also significantly affect the market price of the contingent convertible capital securities of any series and/or the Common Shares.

Fluctuations in the market price of the Common Shares between the Trigger Event Notice Date and the Conversion Settlement Date may also further affect the value to a holder of any Common Shares delivered to that holder on the Conversion Settlement Date.

In addition, as Banco Santander's Common Shares are denominated and trade in euros, the market price of the contingent convertible capital securities of any series may also be affected by fluctuations in the U.S. dollar and euro exchange rate due to the contingent convertible capital securities of such being denominated in U.S. dollars. Upon a Trigger Conversion, the contingent convertible capital securities of such series will convert into Common Shares, or if the holder elects, ADSs, at the Conversion Price. Because the Trigger Conversion will occur when the CET1 ratio of Banco Santander will have deteriorated significantly, the resulting Trigger Conversion will likely be accompanied



by a prior deterioration in the market price of the Common Shares, which may be expected to continue after announcement of the Trigger Conversion. Therefore, in the event of the occurrence of the Trigger Event, the Current Market Price of a Common Share, translated into U.S. dollars at the Prevailing Rate, may be below the Floor Price, and investors could receive Common Shares at a time when the market price of the Common Shares is considerably less than the Conversion Price. Fluctuations in the U.S. dollar and euro exchange rate could therefore also affect the realizable value of the Common Shares.

Furthermore, there may be a delay in holders of contingent convertible capital securities of any series receiving their Common Shares or ADSs, as applicable, following a Trigger Event, during which time the market price of the Common Shares and/or ADSs (as the case may be) or the exchange rate of euro against the U.S. dollar may further decline. No interest or other compensation is payable in the event of a loss by holders of contingent convertible capital securities of any series due to foreign currency conversions.

***The contingent convertible capital securities of any series have no scheduled maturity and no fixed redemption date and holders of contingent convertible capital securities of any series do not have the right to cause the contingent convertible capital securities of such series to be redeemed or otherwise accelerate the repayment of the Liquidation Preference of the contingent convertible capital securities except in very limited circumstances.***

The contingent convertible capital securities of any series are perpetual securities and have no fixed maturity date or fixed redemption date. Banco Santander is under no obligation to redeem the contingent convertible capital securities of any series at any time and the holders of contingent convertible capital securities of such series have no right to call for their redemption at any time. Although under certain circumstances as described under “Description of Contingent Convertible Capital Securities—Redemption and Repurchase” Banco Santander may redeem the contingent convertible capital securities of any series, Banco Santander is under no obligation to do so and holders of contingent convertible capital securities of any series have no right to call for their redemption.

***The contingent convertible capital securities of any series may be redeemable at the option of Banco Santander.***

The contingent convertible capital securities of any series may be redeemable at the option of Banco Santander, in whole but not in part, subject to the prior consent of the Regulator, on the dates to be specified in the relevant prospectus supplement, at the Redemption Price per contingent convertible capital security and otherwise in accordance with Applicable Banking Regulations then in effect. Under the CRR, the Regulator will give its consent to a redemption of the contingent convertible capital securities of any series in such circumstances provided that either of the following conditions is met:

- (i) on or before such redemption of the contingent convertible capital securities of such series, Banco Santander replaces the contingent convertible capital securities of such series with instruments qualifying as Tier 1 Capital of an equal or higher quality on terms that are sustainable for the income capacity of Banco Santander; or
- (ii) Banco Santander has demonstrated to the satisfaction of the Regulator that its Tier 1 Capital and Tier 2 Capital would, following such redemption, exceed the capital ratios required under CRD IV by a margin that the Regulator may consider necessary on the basis set out in CRD IV.

The contingent convertible capital securities of any series are also redeemable on or after the relevant issue date at the option of Banco Santander in whole but not in part, at any time, at the Redemption Price (subject to the prior consent of the Regulator and otherwise in accordance with Applicable Banking Regulations then in force) if there is a Capital Event or a Tax Event.

It is not possible to predict whether or not a change in the laws or regulations of Spain, Applicable Banking Regulations or the application or official interpretation thereof, will occur and so lead to the circumstances in which Banco Santander is able to elect to redeem the contingent convertible capital securities of any series, and if so whether or not Banco Santander will elect to exercise such option to redeem the contingent convertible capital securities of such series. There can be no assurances that, in the event of any such early redemption, holders of contingent convertible capital securities of any series will be able to reinvest the proceeds at a rate that is equal to the return on the contingent convertible capital securities of such series.

In the case of any early redemption of the contingent convertible capital securities of any series at the option of Banco Santander, Banco Santander may exercise this option when its funding costs are lower than the Distribution



200FX&amp;=eN3kvMusN

Rate at which Distributions are then payable in respect of the contingent convertible capital securities of such series. In these circumstances, the rate at which holders of contingent convertible capital securities of such series are able to reinvest the proceeds of such redemption is unlikely to be as high as, and may be significantly lower than, that Distribution Rate.

In addition, the redemption feature of the contingent convertible capital securities of any series may affect their market value. During any period when Banco Santander has the right to elect to redeem the contingent convertible capital securities of such series, the market value of the contingent convertible capital securities of any series is unlikely to rise substantially above the price at which they can be redeemed. This may also be true prior to such period.

***Payments of Distributions on the contingent convertible capital securities of any series are payable in Banco Santander's sole and absolute discretion and Banco Santander may (and in certain circumstances will have no choice but to) cancel any Distributions in whole or in part at any time. Unpaid Distributions are not cumulative or payable at any time thereafter and holders of contingent convertible capital securities of such series shall have no rights thereto.***

The contingent convertible capital securities of any series accrue Distributions as further described "Description of Contingent Convertible Capital Securities—Distributions", but Banco Santander may elect, in its sole and absolute discretion, to cancel the payment of any Distribution in whole or in part at any time that it deems necessary or desirable, and for any reason and without any restriction on it thereafter. Payments of Distributions in any financial year of Banco Santander shall be made only out of Available Distributable Items. To the extent that:

(i) Banco Santander has insufficient Available Distributable Items to make Distributions on the contingent convertible capital securities of any series scheduled for payment in the then current financial year and any equivalent payments scheduled to be made in the then current financial year in respect of any other Parity Securities then outstanding, in each case excluding any portion of such payments already accounted for in determining the Available Distributable Items; and/or

(ii) the Regulator, in accordance with Applicable Banking Regulations, requires Banco Santander to cancel the relevant Distribution in whole or in part,

then Banco Santander will, without prejudice to the right above to cancel the payment of all such Distributions on the contingent convertible capital securities of such series, make partial or, as the case may be, no payment of the relevant Distribution on the contingent convertible capital securities of such series.

No Distribution will be made on the contingent convertible capital securities of any series (whether by way of a repayment of the Liquidation Preference, the payment of any Distribution or otherwise) if and to the extent that such payment would cause the Maximum Distributable Amount (if any) then applicable to Banco Santander to be exceeded. See Risk Factor "CRD IV introduces capital requirements that are in addition to the minimum capital ratio. These additional capital requirements will restrict Banco Santander from making payments of Distributions on the contingent convertible capital securities in certain circumstances, in which case Banco Santander will cancel such Distributions, and holders of contingent convertible capital securities of any series may not be able to anticipate whether or not Banco Santander will cancel such Distributions".

There can, therefore, be no assurances that a holder of contingent convertible capital securities of any series will receive payments of Distributions in respect of the contingent convertible capital securities of such series. Unpaid Distributions are not cumulative or payable at any time thereafter and, accordingly, if any Distribution (or part thereof) is not made in respect of the contingent convertible capital securities of any series as a result of any requirement for, or election of, Banco Santander to cancel such Distributions then the right of the holders of contingent convertible capital securities of such series to receive the relevant Distribution (or part thereof) in respect of the relevant Distribution Period will be extinguished and Banco Santander will have no obligation to pay such Distribution (or part thereof) or to pay any interest thereon, whether or not Distributions on the contingent convertible capital securities of any series are paid in respect of any future Distribution Period.

No such election to cancel the payment of any Distribution (or part thereof) or non-payment of any Distribution (or part thereof) will constitute an event of default or the occurrence of any event related to the insolvency of Banco Santander or entitle holders to take any action to cause the liquidation, dissolution or winding up of Banco Santander.



If, as a result of any of the conditions set out above being applicable, only part of the Distributions under the contingent convertible capital securities of any series may be paid, Banco Santander may proceed, in its sole discretion, to make such partial Distributions under the contingent convertible capital securities of such series.

Notwithstanding the applicability of any one or more of the conditions set out above resulting in Distributions under the contingent convertible capital securities of any series not being paid or being paid only in part, Banco Santander will not be in any way limited or restricted from making any distribution or equivalent payment in connection with any instrument ranking junior to the contingent convertible capital securities of any series (including, without limitation, any CET1 Capital of Banco Santander or the Group) or in respect of any other Parity Security.

Furthermore, upon the occurrence of the Trigger Event, no further Distributions on the contingent convertible capital securities of any series will be made, including any accrued and unpaid Distributions, which will be cancelled.

***As a holding company, the level of Banco Santander's Distributable Items is affected by a number of factors, and insufficient Distributable Items may restrict Banco Santander's ability to make Distributions on the contingent convertible capital securities of any series.***

As a holding company of other operating companies, the level of Banco Santander's Distributable Items is affected in part by a number of factors, including Banco Santander's ability to receive funds, directly or indirectly, from Banco Santander's operating subsidiaries in a manner which creates Distributable Items. Consequently, Banco Santander's future Distributable Items, and therefore Banco Santander's ability to make payments of Distributions, are a function of Banco Santander's existing Distributable Items, Banco Santander's future profitability and performance and the ability of Banco Santander's operating subsidiaries to distribute or dividend profits up the Group structure to Banco Santander. In addition, Banco Santander's Distributable Items will also be reduced by the redemption of equity instruments and the servicing of other debt and equity instruments and there are no restrictions on Banco Santander's ability to make payments on, or redemptions of, Parity Securities or junior securities even if that results in Banco Santander's Distributable Items not being sufficient to make a scheduled Distribution on the contingent convertible capital securities of any series.

The ability of Banco Santander's subsidiaries to pay dividends and Banco Santander's ability to receive Distributions and other payments from Banco Santander's investments in other entities is subject to applicable local laws and other restrictions, including their respective regulatory, capital and leverage requirements, statutory reserves, financial and operating performance and applicable tax laws, and any changes thereto. These laws and restrictions could limit the payment of dividends, Distributions and other payments to Banco Santander by Banco Santander's subsidiaries, which could in time restrict Banco Santander's ability to fund other operations or to maintain or increase Banco Santander's Distributable Items. The level of Banco Santander's Distributable Items may be further affected by changes to regulations or the requirements and expectations of applicable regulatory authorities. In particular, local capital or ring-fencing requirements outside Spain could adversely affect Banco Santander's Distributable Items in the future.

Further, Banco Santander's Distributable Items may be adversely affected by the performance of Banco Santander's business in general, changes in its organizational structure, factors affecting its financial position (including capital and leverage), the economic environment in which it operates and other factors outside of its control. Banco Santander shall not make a payment of Distributions on the contingent convertible capital securities of any series on any Distribution Payment Date (and such Distribution shall therefore be deemed to have been cancelled and thus shall not be due and payable on such Distribution Payment Date) if the level of Distributable Items is insufficient to fund that payment. Distributions that are deemed cancelled shall not be due and shall not accumulate or be payable at any time thereafter and holders of contingent convertible capital securities of any series shall have no right thereto. See "*—Payments of Distributions on the contingent convertible capital securities of any series are payable in Banco Santander's sole and absolute discretion and Banco Santander may (and in certain circumstances will have no choice but to) cancel any Distributions in whole or in part at any time. Unpaid Distributions are not cumulative or payable at any time thereafter and holders of contingent convertible capital securities of such series shall have no rights thereto.*"



***The contingent convertible capital securities of any series do not contain events of default and the remedies available to holders under the convertible capital securities of any series are limited.***

Holders of convertible capital securities of any series have no ability to require Banco Santander to redeem the convertible capital securities of such series. The terms of the convertible capital securities of any series do not provide for any events of default. Banco Santander is entitled to cancel the payment of any Distribution in whole or in part at any time (see “—*Payments of Distributions on the contingent convertible capital securities of any series are payable in Banco Santander’s sole and absolute discretion and Banco Santander may (and in certain circumstances will have no choice but to) cancel any Distributions in whole or in part at any time. Unpaid Distributions are not cumulative or payable at any time thereafter and holders of contingent convertible capital securities of such series shall have no rights thereto*”) and such cancellation will not constitute any event of default or similar event or entitle holders of convertible capital securities of such series to take any related action against Banco Santander. If Common Shares are not issued and delivered following the Trigger Event, then on a liquidation, dissolution or winding-up of Banco Santander the claim of a holder of convertible capital securities of any series will not be in respect of the Liquidation Preference of its contingent convertible capital securities of such series but will be an entitlement to receive out of the relevant assets a monetary amount equal to that which holders of the contingent convertible capital securities of such series would have received on any distribution of the assets of Banco Santander if such Trigger Conversion had taken place immediately prior to such liquidation, dissolution or winding-up.

***Holders of the contingent convertible capital securities of any series only have a limited ability to cash in their investment in the contingent convertible capital securities of such series.***

Banco Santander has the option to redeem the convertible capital securities of any series in certain circumstances (see “—*The contingent convertible capital securities of any series may be redeemable at the option of Banco Santander*” above). The ability of Banco Santander to redeem or repurchase the contingent convertible capital securities of any series is subject to Banco Santander satisfying certain conditions as described under “Description of Contingent Convertible Capital Securities—Redemptions and Purchases”. There can be no assurance that holders of convertible capital securities of any series will be able to reinvest the amount received upon redemption and/or repurchase at a rate that will provide the same rate of return as their investment in the convertible capital securities of such series.

Therefore, holders of the contingent convertible capital securities of any series have no ability to cash in their investment, except:

- (i) if Banco Santander exercises its rights to redeem or repurchase the contingent convertible capital securities of such series in accordance with “Description of Contingent Convertible Capital Securities—Redemption and Repurchase”; or
- (ii) by selling the contingent convertible capital securities of such series or, following the occurrence of the Trigger Event and the issue and delivery of Common Shares or, if the holder elects, ADSs, in accordance with “Description of Contingent Convertible Capital Securities—Conversion Upon Trigger Event”, their Common Shares or ADSs, provided a secondary market exists at the relevant time for the contingent convertible capital securities of such series, the Common Shares or the ADSs.

***Holders of the contingent convertible capital securities of any series have limited anti-dilution protection.***

The number of Common Shares to be issued and delivered on Trigger Conversion in respect of each contingent convertible capital security of any series shall be determined by dividing the Liquidation Preference of such contingent convertible capital security by the Conversion Price in effect on the Trigger Event Notice Date. The Conversion Price will be, if the Common Shares are then admitted to trading on a Relevant Stock Exchange, the higher of: (a) the Current Market Price of a Common Share, translated into U.S. dollars at the Prevailing Rate, (b) the Floor Price and (c) the nominal value of a Common Share at the time of conversion, translated into U.S. dollars at the Prevailing Rate, or, if the Common Shares are not then admitted to trading on a Relevant Stock Exchange, the higher of (b) and (c) above. See “Description of Contingent Convertible Capital Securities—Conversion Price” regarding the Conversion Price.



The Floor Price will be adjusted in the event that there is a consolidation, reclassification/redesignation or subdivision affecting the Common Shares, the payment of any Extraordinary Dividends or Non-Cash Dividends, rights issues or grant of other subscription rights or certain other events which affect the Common Shares, but only in the situations and to the extent provided in “Description of Contingent Convertible Capital Securities—Anti-Dilution Adjustment of the Floor Price”. There is no requirement that there should be an adjustment for every corporate or other event that may affect the value of the Common Shares or that, if a holder of contingent convertible capital securities of any series were to have held the Common Shares at the time of such adjustment, the holder of the contingent convertible capital securities of such series would not have benefited to a greater extent.

Furthermore, the relevant indenture does not provide for certain undertakings from Banco Santander which are sometimes included in securities that convert into the ordinary shares of an issuer to protect investors in situations where the relevant conversion price adjustment provisions do not operate to neutralize the dilutive effect of certain corporate events or actions on the economic value of the Conversion Price. For example, the relevant indenture contains neither an undertaking restricting the modification of rights attaching to the Common Shares nor an undertaking restricting issues of new share capital with preferential rights relative to the contingent convertible capital securities of any series.

Further, if Banco Santander issues any Common Shares credited as fully paid to Shareholders by way of capitalization of profits or reserves (including any share premium account or capital redemption reserve), where the Shareholders may elect to receive a Dividend in cash in lieu of such Common Shares and such Dividend does not constitute an Extraordinary Dividend, no conversion price adjustment shall be applicable in accordance with sub-paragraphs (b) and (c) of “Description of Contingent Convertible Capital Securities—Anti-Dilution Adjustment of the Floor Price”, and therefore holders of contingent convertible capital securities of any series will not be protected by anti-dilution measures.

Accordingly, corporate events or actions in respect of which no adjustment to the Floor Price is made may adversely affect the value of the contingent convertible capital securities of any series.

In order to comply with increasing regulatory capital requirements imposed by applicable regulations, Banco Santander may need to raise additional capital. Further capital raisings by Banco Santander could result in the dilution of the interests of the holders of contingent convertible capital securities of any series subject only to the limited anti-dilution protections referred to above.

***The obligations of Banco Santander under the contingent convertible capital securities of any series are subordinated to unsubordinated obligations and subordinated obligations senior in right of payment to the contingent convertible capital securities of any series and will be further subordinated upon conversion into Common Shares.***

Unless previously converted into Common Shares, the payment obligations of Banco Santander under the contingent convertible capital securities are direct, unconditional, unsecured and subordinated obligations of Banco Santander and rank (a) *pari passu* among themselves and with (i) all other claims in respect of any liquidation preference or otherwise for principal in respect of any outstanding Additional Tier 1 Instruments and (ii) any other subordinated obligations (*créditos subordinados*) which by law and/or by their terms, to the extent permitted by Spanish law, rank *pari passu* with Banco Santander’s obligations under Additional Tier 1 Instruments; (b) junior to (i) any unsubordinated obligations of Banco Santander, (ii) any subordinated obligations (*créditos subordinados*) of Banco Santander which become subordinated pursuant to Article 92.1° of the Insolvency Law and (iii) any other subordinated obligations (*créditos subordinados*) which by law and/or by their terms, to the extent permitted by Spanish law, rank senior to Banco Santander’s obligations under Additional Tier 1 Instruments; and (c) senior to (i) any claims for the liquidation amount of the Common Shares and (ii) any other subordinated obligations (*créditos subordinados*) of Banco Santander which by law and/or by their terms, to the extent permitted by Spanish law, rank junior to Banco Santander’s obligations under Additional Tier 1 Instruments.

Subject to compliance with applicable regulatory requirements, Banco Santander expects from time to time to incur additional indebtedness or other obligations that will constitute senior and other subordinated indebtedness that will rank ahead of the contingent convertible capital securities of any series, and the contingent convertible capital securities of any series do not contain any provisions restricting Banco Santander’s ability or Banco Santander’s subsidiaries from incurring such senior or subordinated indebtedness. Although the contingent convertible capital securities of any series may pay a higher rate of interest than other comparable securities which are not as deeply





200FX&=&eN3ljedLp

subordinated, there is a risk that holders of contingent convertible capital securities of such series will lose all or some of their investment should Banco Santander become insolvent since Banco Santander's assets would be available to pay such amounts only after all of Banco Santander's senior creditors have been paid in full.

In addition, if Banco Santander were wound up, liquidated or dissolved, Banco Santander's liquidator would first apply the assets of Banco Santander to satisfy all claims of holders of unsubordinated obligations of Banco Santander and other creditors ranking ahead of holders of convertible capital securities of any series. If Banco Santander does not have sufficient assets to settle claims of prior ranking creditors in full, the claims of the holders of convertible capital securities of any series will not be satisfied. Holders of convertible capital securities of any series will share equally in any distribution of assets with the holders of any other Parity Securities if Banco Santander does not have sufficient funds to make full payment to all of them. In such a situation, convertible capital securities of such series could lose all or part of their investment.

Furthermore, if the Trigger Event occurs but the relevant conversion of the convertible capital securities of any series into Common Shares is still to take place before the liquidation, dissolution or winding-up of Banco Santander, the entitlement of holders of convertible capital securities of any series will be to receive out of the relevant assets of Banco Santander a monetary amount equal to that which holders of convertible capital securities of such series would have received on any distribution of the assets of Banco Santander if the Trigger Conversion had taken place immediately prior to such liquidation, dissolution or winding-up.

Therefore, if the Trigger Event occurs, each holder of convertible capital securities of any series will be effectively further subordinated from being the holder of a subordinated debt instrument to being the holder of Common Shares and there is an enhanced risk that holders of convertible capital securities of such series will lose all or some of their investment.

***Holders of contingent convertible capital securities of any series will have limited rights after the Trigger Conversion and the issuance of the Common Shares to the Settlement Shares Depository (or to the relevant recipient in accordance with terms of the contingent convertible capital securities of the relevant series) will constitute an irrevocable and automatic release of all of Banco Santander's obligations in respect of the contingent convertible capital securities of such series.***

Following a Trigger Conversion, Banco Santander will be obligated to issue the Common Shares to the Settlement Shares Depository (or to the relevant recipient in accordance with the terms of the contingent convertible capital securities of the relevant series), which will hold the Common Shares on behalf of holders of contingent convertible capital securities of such series. Once the Common Shares are delivered to the Settlement Shares Depository (or to the relevant recipient in accordance with the terms of the contingent convertible capital securities of the relevant series), all of Banco Santander's obligations under the contingent convertible capital securities of such series will be irrevocably and automatically released in consideration of such issuance to the Settlement Shares Depository (or to the relevant recipient in accordance with the terms of the contingent convertible capital securities of such series), and under no circumstances will such released obligations be reinstated and holders of contingent convertible capital securities of such series will not be entitled to any form of compensation in the event of Banco Santander's potential recovery or change in Banco Santander's CET1 ratio after the Conversion Settlement Date. With effect from the Conversion Settlement Date, holders of contingent convertible capital securities of any series will have recourse only to the Settlement Shares Depository for the delivery to them of Common Shares.

If Banco Santander does not deliver the Common Shares to the Settlement Shares Depository (or to the relevant recipient in accordance with the terms of the contingent convertible capital securities of the relevant series) following a Trigger Event, the only claim holders of contingent convertible capital securities of any series will have against Banco Santander will be for specific performance to have such Common Shares issued and delivered. Moreover, holders of contingent convertible capital securities of any series will not have any rights against Banco Santander with respect to repayment of the Liquidation Preference of the contingent convertible capital securities of any series or payment of Distributions or any other amount on, or in respect of, the contingent convertible capital securities of such series, in each case that is not due and payable, which liabilities will be automatically released. Accordingly, the Liquidation Preference of the contingent convertible capital securities will equal zero at all times from and after the Trigger Conversion and any Distributions will be cancelled or deemed to have been cancelled at all times thereafter and will not be due and payable, including any interest in respect of an interest period ending on any Distribution Payment Date falling between the date of a Trigger Event and the Trigger Conversion.



200FX&amp;=eN3lvrLH

In addition, Banco Santander has not yet appointed a Settlement Shares Depository and may not be able to appoint a Settlement Shares Depository if a Trigger Conversion occurs. In such case, Banco Santander will effect, by means Banco Santander deems reasonable under the circumstances (including, without limitation, issuance of the Common Shares to another nominee or to holders of contingent convertible capital securities of any series directly) the issuance and/or delivery of the Settlement Shares, or, if holders of contingent convertible capital securities elect, ADSs, as applicable, to such holders. Such arrangements may be disadvantageous to, and more restrictive on, holders of contingent convertible capital securities of such series, such as involving a longer period of time before they receive ADSs or Common Shares than would be the case under the arrangements expected to be entered into with a Settlement Shares Depository or the inability to deliver ADSs. Nevertheless, such issuance also will irrevocably and automatically release all of Banco Santander's obligations under the contingent convertible capital securities of such series as if the Common Shares had been issued to the Settlement Shares Depository.

***If a Delivery Notice is not duly delivered by a holder of contingent convertible capital securities of any series, that holder will bear the risk of fluctuations in the price of the Common Shares, and Banco Santander may, in its sole and absolute discretion, cause the sale of any Common Shares underlying the contingent convertible capital securities of such series.***

In order to obtain delivery of the relevant Common Shares, or, if the holder elects, ADSs, upon conversion, the relevant holder must deliver a duly completed Delivery Notice in accordance with the provisions set out under "Description of Contingent Convertible Capital Securities—Settlement Procedures". If a duly completed Delivery Notice is not so delivered, then such holder will bear the risk of fluctuations in the price of the Common Shares that may further affect the value to that holders of any Common Shares subsequently delivered. In addition, Banco Santander may, on the Notice Cut-off Date, in its sole and absolute discretion, elect to appoint a person (the "Selling Agent") to (save as provided below) procure that all Common Shares held by the Settlement Shares Depository in respect of which no duly completed Delivery Notice has been delivered on or before the Notice Cut-off Date as aforesaid shall be sold by or on behalf of the Selling Agent as soon as reasonably practicable.

Due to the fact that, in the event of the Trigger Event, investors are likely to receive Common Shares at a time when the market price of the Common Shares may be low, the cash value of the Common Shares received upon any such sale could be substantially lower than the price paid for the contingent convertible capital securities of such series at the time of their purchase. In addition, the proceeds of such sale may be further reduced as a result of the number of Common Shares offered for sale at the same time being much greater than may be the case in the event of sales by individual holders of contingent convertible capital securities of any series.

***Holders of contingent convertible capital securities of any series may be obliged to make a takeover bid in case of the Trigger Event if they take delivery of Common Shares.***

Upon the occurrence of the Trigger Event, a holder of contingent convertible capital securities of any series receiving Common Shares may have to make a takeover bid addressed to the shareholders of Banco Santander pursuant to the consolidated text of the Securities Market Act approved by Royal Legislative Decree 4/2015 of 23 October, as amended, and Royal Decree 1066/2007 of 27 July 2007, as amended, on the legal regime of takeover bids, implementing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004, if its aggregate holding in Banco Santander exceeds 30% of the available voting rights or if its aggregate holding in Banco Santander is less than 30% of such voting rights, but within 24 months of the date on which it acquired that lower percentage, it nominates a number of directors that, when taken together with any directors it has previously nominated, represent more than half of the members of Banco Santander's management body, in each case as a result of the conversion of the contingent convertible capital securities of any series into Common Shares.

***Holders of contingent convertible capital securities of any series may be subject to disclosure obligations and/or may need approval by Banco Santander's Regulators and other authorities under certain circumstances.***

As the contingent convertible capital securities of any series are convertible into Common Shares in certain circumstances, an investment in the contingent convertible capital securities of any series may result in holders of the contingent convertible capital securities of such series, upon conversion of the contingent convertible capital securities of such series into Common Shares, having to comply with certain approval and/or disclosure requirements pursuant to Spanish and other laws and regulations. Non-compliance with such approval and/or



disclosure requirements may lead to the incurrence by holders of contingent convertible capital securities of such series of substantial fines and/or suspension of voting rights associated with the Common Shares. Accordingly, each potential investor should consult its legal advisers as to the terms of the contingent convertible capital securities of any series, in respect of its existing shareholding and the level of holding it would have if it receives Common Shares following a Trigger Event.

***There is no restriction under the contingent convertible capital securities indenture on the amount or type of further securities or indebtedness which Banco Santander may incur.***

Except as provided under “Description of Contingent Convertible Capital Securities—Subordination”, there is no restriction under the contingent convertible capital securities indenture on the amount or type of further securities or indebtedness which Banco Santander may issue or incur which ranks senior to, or *pari passu* with, the contingent convertible capital securities of any series. The incurrence of any such further indebtedness may reduce the amount recoverable by holders of contingent convertible capital securities of any series on a liquidation, dissolution or winding-up of Banco Santander in respect of the contingent convertible capital securities of such series and may limit the ability of Banco Santander to meet its obligations in respect of the contingent convertible capital securities of such series, and result in a holder of the contingent convertible capital securities of such series losing all or some of its investment in the contingent convertible capital securities of such series. In addition, the contingent convertible capital securities of any series do not contain any restriction on Banco Santander issuing securities that may have preferential rights to the Common Shares or securities ranking *pari passu* with the contingent convertible capital securities of such series and having similar or preferential terms to the contingent convertible capital securities of such series.

***Prior to the issue and registration of the Common Shares to be delivered following the occurrence of the Trigger Event, holders of contingent convertible capital securities of any series will not be entitled to any rights with respect to such Common Shares, but will be subject to all changes made with respect to the Common Shares.***

Any pecuniary rights with respect to the Common Shares, in particular the entitlement to dividends, shall only arise and the exercise of voting rights and rights related thereto with respect to any Common Shares is only possible after the date on which, following Trigger Conversion, as a matter of Spanish law the relevant Common Shares are issued and the person entitled to the Common Shares is registered as a shareholder in Iberclear and its participating entities in accordance with the provisions of, and subject to the limitations provided in, the articles of association of Banco Santander. Therefore, any failure by Banco Santander to issue, or effect the registration of, the Common Shares after the occurrence of the Trigger Event would result in the holders of contingent convertible capital securities of the relevant series not receiving any benefits related to the holding of the Common Shares and, on a liquidation, dissolution or winding-up of Banco Santander, the entitlement of any such holders will be an entitlement to receive out of the relevant assets of Banco Santander a monetary amount equal to that which holders of contingent convertible capital securities of such series would have received on any distribution of the assets of Banco Santander if such conversion had taken place immediately prior to such liquidation, dissolution or winding-up, as described in “Description of Contingent Convertible Capital Securities—Liquidation Distribution”.

***The contingent convertible capital securities of any series are Banco Santander’s exclusive obligations.***

The contingent convertible capital securities of any series are Banco Santander’s exclusive obligations. Banco Santander is a holding company and conducts a substantial portion of its operations through its subsidiaries. Banco Santander’s subsidiaries are separate and distinct legal entities, and have no obligations to pay any amounts due on the contingent convertible capital securities of any series or to provide Banco Santander with funds to meet any of its payment obligations. Banco Santander’s rights to participate in the assets of any subsidiary if it is liquidated will be subject to the prior claims of the subsidiary’s creditors.

***The contingent convertible capital securities of any series may not be a suitable investment for all investors.***

The contingent convertible capital securities of any series are novel and complex financial instruments that involve a high degree of risk. As a result, an investment in the contingent convertible capital securities of any series and the Common Shares issuable following a Trigger Event will involve certain increased risks. Each potential investor in the contingent convertible capital securities of any series must determine the suitability of that investment in light of its own circumstances. In particular, each potential investor may wish to consider, either on its own or with the help of its financial and other professional advisers, whether it:

- (i) has sufficient knowledge and experience to make a meaningful evaluation of the contingent convertible capital securities of such series, the merits and risks of investing in the contingent convertible capital securities of such series and the information contained or incorporated by reference in this prospectus, taking into account that the contingent convertible capital securities of such series may only be a suitable investment for professional or institutional investors;



(ii) has access to, and knowledge of, appropriate analytical tools to evaluate, in the context of its particular financial situation, an investment in the contingent convertible capital securities of such series and the impact the contingent convertible capital securities of such series will have on its overall investment portfolio;

(iii) has sufficient financial resources and liquidity to bear all of the risks of an investment in the contingent convertible capital securities of such series, including where the currency for payments in respect of the contingent convertible capital securities of such series is different from the potential investor's currency and the possibility that the entire Liquidation Preference of the contingent convertible capital securities of any series could be lost, including following the exercise by the Relevant Resolution Authority of any Bail-in Power;

(iv) understands thoroughly the terms of the contingent convertible capital securities of such series, including the provisions relating to the payment and cancellation of Distributions and the Trigger Conversion of the contingent convertible capital securities of such series into Common Shares, and is familiar with the behavior of financial markets, including the possibility that the contingent convertible capital securities of any series may become subject to write down or conversion if the Bail-in Power is exercised; and

(v) is able to evaluate possible scenarios for economic, interest rate and other factors that may affect its investment and its ability to bear the applicable risks.

Sophisticated investors generally do not purchase complex financial instruments that bear a high degree of risk as stand-alone investments. They purchase such financial instruments as a way to enhance yield with an understood, measured, appropriate addition of risk to their overall portfolios. A potential investor should not invest in the contingent convertible capital securities of any series unless it has the knowledge and expertise (either alone or with a financial advisor) to evaluate how the contingent convertible capital securities of such series will perform under changing conditions, the resulting effects on the likelihood of the Trigger Conversion into Common Shares and the value of the contingent convertible capital securities of such series, and the impact this investment will have on the potential investor's overall investment portfolio. Prior to making an investment decision, potential investors should consider carefully, in light of their own financial circumstances and investment objectives, all the information contained in this prospectus and the prospectus supplement or incorporated by reference herein.

***The market value of the contingent convertible capital securities of any series may be influenced by unpredictable factors.***

Certain factors, many of which are beyond Banco Santander's control, will influence the value of the contingent convertible capital securities of any series and the price, if any, at which securities dealers may be willing to purchase or sell the contingent convertible capital securities of such series in the secondary market, including:

- Banco Santander's creditworthiness from time to time;
- supply and demand for the contingent convertible capital securities of such series;
- economic, financial, political or regulatory events or judicial decisions that affect Banco Santander, the Group or the financial markets generally, including the introduction of any financial transactions tax; and
- the trading price of Banco Santander's ordinary shares and/or ADSs.

Accordingly, if holders sell their contingent convertible capital securities of any series in the secondary market, they may not be able to obtain a price equal to the Liquidation Preference of the contingent convertible capital securities of such series or a price equal to the price that they paid for the contingent convertible capital securities of such series.



***The contingent convertible capital securities are not investment grade and are subject to the risks associated with non-investment grade securities.***

The contingent convertible capital securities of any series, upon issuance, will not be considered to be investment grade securities, and as such will be subject to a higher risk of price volatility than higher-rated securities. Furthermore, deteriorating outlooks for Banco Santander or the Group, or volatile markets, could lead to a significant deterioration in market prices of below-investment grade rated securities such as the contingent convertible capital securities of any series.

***Credit ratings may not reflect all risks associated with an investment in the contingent convertible capital securities of any series.***

Ratings may not reflect the potential impact of all risks related to structure, market, additional factors discussed above, and other factors that may affect the value of the contingent convertible capital securities of any series.

Similar ratings assigned to different types of securities do not necessarily mean the same thing and any rating assigned to the contingent convertible capital securities of any series does not address the likelihood that Distributions or any other payments in respect of the contingent convertible capital securities of such series will be made on any particular date or at all. Credit ratings also do not address the marketability or market price of securities.

Any change in the credit ratings assigned to the contingent convertible capital securities of any series may affect the market value of the contingent convertible capital securities of such series. Such change may, among other factors, be due to a change in the methodology applied by a rating agency to rating securities with similar structures to the contingent convertible capital securities of any series, as opposed to any revaluation of Banco Santander's financial strength or other factors such as conditions affecting the financial services industry generally.

A credit rating is not a recommendation to buy, sell or hold securities and may be revised or withdrawn by the rating agency at any time. Potential investors should not rely on any rating of the contingent convertible capital securities of any series and should make their investment decision on the basis of considerations such as those outlined under "*The contingent convertible capital securities of any series may not be a suitable investment for all investors*".

In general, European regulated investors are restricted under the CRA Regulation from using credit ratings for regulatory purposes, unless such ratings are issued by a credit rating agency established in the EU and registered under the CRA Regulation (and such registration has not been withdrawn or suspended), subject to transitional provisions that apply in certain circumstances whilst the registration application is pending. Such general restriction will also apply in the case of credit ratings issued by non-EU credit rating agencies, unless the relevant credit ratings are endorsed by an EU-registered credit rating agency or the relevant non-EU rating agency is certified in accordance with the CRA Regulation (and such endorsement action or certification, as the case may be, has not been withdrawn or suspended). Certain information with respect to the credit rating agencies and ratings will be disclosed in the relevant prospectus supplement.

***Legal investment considerations may restrict certain investments.***

The investment activities of certain investors may be subject to law or review or regulation by certain authorities. Each potential investor should determine for itself, on the basis of professional advice where appropriate, whether and to what extent (i) the contingent convertible capital securities of any series are lawful investments for it, (ii) the contingent convertible capital securities of such series can be used as collateral for various types of borrowing and (iii) other restrictions apply to its purchase or pledge of the contingent convertible capital securities of any series. Financial institutions should consult their legal advisers or the appropriate regulators to determine the appropriate treatment of the contingent convertible capital securities of any series under any applicable risk-based capital or similar rules.



***The contingent convertible capital securities of any series may trade with accrued Distributions, but under certain circumstances described above, such Distributions may be cancelled and not paid on the relevant Distribution Payment Date.***

The contingent convertible capital securities of any series may trade, and/or the prices for the contingent convertible capital securities of any series may appear in the relevant trading systems with accrued Distributions. If this occurs, purchasers of contingent convertible capital securities of any series in the secondary market will pay a price that reflects such accrued Distributions upon purchase of the contingent convertible capital securities of such series. However, if a payment of Distributions on any Distribution Payment Date is cancelled or deemed cancelled (either in whole or in part) as described herein and thus is not due and payable, purchasers of such contingent convertible capital securities of such series will not be entitled to that Distribution (or cancelled portion thereof) on the relevant Distribution Payment Date. This may affect the value of holders' investment in the contingent convertible capital securities of any series.

***Following a Trigger Conversion, the contingent convertible capital securities of any series will remain in existence until the applicable Conversion Settlement Date for the sole purpose of evidencing a holder's rights to receive Common Shares or, if they elect, ADSs, as applicable, from the Settlement Shares Depository (or the relevant recipient in accordance with the terms of the contingent convertible capital securities of such series), and the rights of holders of contingent convertible capital securities of any series will be limited accordingly.***

Following a Trigger Conversion, the contingent convertible capital securities of any series will remain in existence until the applicable Conversion Settlement Date (at which point the contingent convertible capital securities of any series will be cancelled) for the sole purpose of evidencing the right of holders of contingent convertible capital securities of any series to receive Common Shares, or, if they elect, ADSs, as applicable, from the Settlement Shares Depository (or the relevant recipient in accordance with the terms of the contingent convertible capital securities of such series). If Banco Santander has been unable to appoint a Settlement Shares Depository, Banco Santander will effect, by means Banco Santander deems reasonable under the circumstances (including, without limitation, issuance of the Settlement Shares to another nominee or to the holders of the contingent convertible capital securities of any series directly), the issuance and/or delivery of the Settlement Shares, or, if they elect, ADSs, as applicable, to them. See also “—*Holders of contingent convertible capital securities of any series will have limited rights after the Trigger Conversion and the issuance of the Common Shares to the Settlement Shares Depository (or to the relevant recipient in accordance with terms of the contingent convertible capital securities of the relevant series) will constitute an irrevocable and automatic release of all of Banco Santander's obligations in respect of the contingent convertible capital securities of such series*”.

Although Banco Santander currently expects that beneficial interests in the contingent convertible capital securities of any series will be transferable between the Trigger Conversion and the Suspension Date and that any trades in the contingent convertible capital securities of any series would clear and settle through DTC in such period, there is no guarantee that this will be the case. Even if the contingent convertible capital securities of any series are transferable following the Trigger Conversion, there is no guarantee that an active trading market will exist for the contingent convertible capital securities of any series following the Trigger Conversion. Accordingly, the price received for the sale of any beneficial interest in any contingent convertible capital securities of any series during this period may not reflect the market price of such contingent convertible capital securities or the Common Shares. Furthermore, transfers of beneficial interests in the contingent convertible capital securities of any series may be restricted following the Trigger Conversion. For example, if the clearance and settlement of transactions in the contingent convertible capital securities of any series is suspended by DTC at an earlier time than currently expected, it may not be possible to transfer beneficial interests in the contingent convertible capital securities of such series in DTC and trading in the contingent convertible capital securities of such series may cease. The contingent convertible capital securities of any series may also cease to be admitted to the relevant stock exchange before or after the Suspension Date.

In addition, Banco Santander has been advised by DTC that it will suspend all clearance and settlement of transactions in the contingent convertible capital securities of any series on the Suspension Date. As a result, holders of contingent convertible capital securities of any series will not be able to settle the transfer of any contingent convertible capital securities of such series through DTC following the Suspension Date, and any sale or other transfer of the contingent convertible capital securities of any series that holders may have initiated prior to the Suspension Date that is scheduled to settle after the Suspension Date will be rejected by DTC and will not be settled through DTC.



200FX&=eNJJXS6Lx

The contingent convertible capital securities of any series may cease to be admitted to trading on any stock exchange on which the contingent convertible capital securities of any series are then listed or admitted to trading after the Suspension Date.

Moreover, although holders of contingent convertible capital securities of any series will have a right to obtain their *pro rata* share of Settlement Shares upon the issuance of such Settlement Shares to the Settlement Shares Depository (or the relevant recipient in accordance with the terms of the contingent convertible capital securities of any series), the Settlement Shares will be registered in the name of the Settlement Shares Depository (or the relevant recipient in accordance with the terms of the contingent convertible capital securities of any series), and holders will not be able to sell or otherwise transfer any Settlement Shares until such time as they are delivered to them and registered in their name or to the account they specify.

***Holders of contingent convertible capital securities of any series will be responsible for any taxes following a Trigger Conversion.***

Except as otherwise indicated in the “*Description of Contingent Convertible Capital Securities*”, neither Banco Santander nor any member of the Group will be liable for any taxes or duties (including, without limitation, any stamp duty, stamp duty reserve tax or any other capital, issue, transfer, registration, financial transaction or documentary tax or duty) arising on conversion or that may arise or be paid in connection with the issue and delivery of Common Shares following a Trigger Conversion. Holders of contingent convertible capital securities of any series must pay any taxes and duties (including, without limitation, any stamp duty, stamp duty reserve tax or any other capital, issue, transfer, registration, financial transaction or documentary tax or duty) arising on conversion in connection with the issue and delivery of Common Shares to the Settlement Shares Depository on their behalf.

***Limitations on gross-up obligation under the contingent convertible capital securities of any series***

Banco Santander’s obligation to pay additional amounts in respect of any withholding or deduction in respect of taxes under the terms of the contingent convertible capital securities of any series applies only to payments of distributions due and paid under the contingent convertible capital securities of any series and not to payments of Liquidation Preference. As such, Banco Santander would not be required to pay any additional amounts under the terms of the contingent convertible capital securities of any series to the extent any withholding or deduction applied to payments of Liquidation Preference. Accordingly, if any such withholding or deduction were to apply to any payments of Liquidation Preference under the contingent convertible capital securities of any series, holders of contingent convertible capital securities of such series may receive less than the full amount due under the contingent convertible capital securities of such series, and the market value of the contingent convertible capital securities of any series may be adversely affected. In any case, increased payments to comply with gross-up obligations will only be made if and to the extent that they do not exceed Distributable Items.

***The contingent convertible capital securities of any series may be subject to substitution and/or variation without a holder’s consent***

Subject as provided herein, in particular under “Description of Contingent Convertible Capital Securities—Substitution and Variation”, if a Capital Event or a Tax Event occurs, Banco Santander may, at its option, and without the consent or approval of the holders of the contingent convertible capital securities of such series, elect either (i) to substitute all (but not some only) of the contingent convertible capital securities of such series or (ii) to modify the terms of all (but not some only) of the contingent convertible capital securities of such series, in each case so that they are substituted for, or varied to, become, or remain, Qualifying Notes. While Qualifying Notes generally must contain terms that are materially no less favorable to holders of the contingent convertible capital securities of such series as the original terms of the contingent convertible capital securities of such series, there can be no assurance that the terms of any Qualifying Notes will be viewed by the market as equally favorable, or that the Qualifying Notes will trade at prices that are equal to the prices at which the contingent convertible capital securities of such series would have traded on the basis of their original terms.

Further, prior to the making of any such substitution or variation, Banco Santander, shall not be obliged to have regard to the tax position of individual holders of the contingent convertible capital securities of such series or to the tax consequences of any such substitution or variation for any such individual holder. No holder of the contingent convertible capital securities of such series shall be entitled to claim, whether from the Trustee, Banco Santander, or any other person, any indemnification or payment in respect of any tax consequence of any such substitution or variation upon an individual holder of the contingent convertible capital securities of such series.



**DESCRIPTION OF DEBT SECURITIES**

The following is a summary of the general terms that will apply to any debt securities that may be offered by Banco Santander. The term “debt securities” does not include the “contingent convertible capital securities” described under “Description of Contingent Convertible Capital Securities”.

Each time that Banco Santander issues debt securities, Banco Santander will file a prospectus supplement and/or free writing prospectus with the SEC, which you should read carefully. The prospectus supplement and/or free writing prospectus will summarize specific financial terms of an investor’s security and may contain additional or different terms of those debt securities to those described in this prospectus. All references in this prospectus to a prospectus supplement in respect of any series of securities include references to a free writing prospectus if a free writing prospectus is filed to set forth any terms of such series. The terms presented here, together with the terms contained in the prospectus supplement, will be a description of the material terms of the debt securities, but if there is any inconsistency between the terms presented here and those in the prospectus supplement, those in the prospectus supplement will apply and will replace those presented here. Therefore, the statements made below in this section may not apply to each investor’s debt security. Investors should also read the indentures under which Banco Santander will issue the debt securities, which have been filed with the SEC as exhibits to the registration statement of which this prospectus is a part.

In this description of debt securities, the following expressions have the following meanings:

“Additional Tier 1 Instrument” means any contractually subordinated obligation (*créditos subordinados*) of Banco Santander according to Article 92.2° of the Spanish Insolvency Law, ranking as an additional tier 1 instrument (*instrumentos de capital adicional de nivel 1*) under Additional Provision 14.2°(c) of Law 11/2015.

An “Alignment Event” is deemed to have occurred if, following the implementation of the Senior Ranking Amendment Legislation or an amendment thereof, the terms and conditions of Statutory Second Ranking Senior Liabilities or the most junior sub-class within the unsubordinated and unsecured liabilities class, are different in any respect from the terms and conditions of the second ranking senior debt securities set forth herein. Further, with respect to each series of second ranking senior debt securities, an Alignment Event will be deemed to have occurred if the Senior Ranking Amendment Legislation requires that only securities issued on or following a certain date which is after the issue date of the second ranking senior debt securities of such series may qualify as Statutory Second Ranking Senior Liabilities or as the most junior sub-class within the unsubordinated and unsecured liabilities class.

“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 Banco Santander and/or the Group including, without limitation to the generality of the foregoing, those regulations, requirements, guidelines and policies relating to capital adequacy, resolution and/or solvency then in effect of the Regulator (whether or not such requirements, guidelines or policies have the force of law and whether or not they are applied generally or specifically to Banco Santander and/or the Group).

“Applicable TLAC/MREL Regulations” means, at any time, the laws, regulations, requirements, guidelines and policies then in effect in the Kingdom of Spain giving effect to the MREL and the principles set forth in the FSB TLAC Term Sheet or any successor principles then applicable to Banco Santander and/or the Group, including, without limitation to the generality of the foregoing, CRD IV, the BRRD and those regulations, requirements, guidelines and policies giving effect to the MREL and the principles set forth in the FSB TLAC Term Sheet or any successor principles 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 Banco Santander and/or the Group).

“Business Day” means, unless otherwise provided for in the applicable prospectus supplement, any day, other than Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions are authorized or required by law, regulation or executive order to close in the City of New York, London, Madrid or any other place or places where the principal of, or any premium or interest on, or any Additional Amounts with respect to the debt securities of that series are payable.





200FX&amp;=8eN3n7VVL5

“Calculation Agent” means the Trustee or such other person authorized by Banco Santander as the party responsible for calculating the rate(s) of interest and interest amount(s) and/or such other amount(s) from time to time in relation to any series of debt securities as may be specified in the relevant prospectus supplement.

“Capital Disqualification Event” means a change in Spanish law, Applicable Banking Regulations or any change in the application or official interpretation thereof that results or is likely to result in the entire outstanding aggregate principal amount of subordinated debt securities of any series ceasing to be included in, or counting towards, Banco Santander and/or the Group’s Tier 2 Capital.

“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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC or such other directive as may come into effect in place thereof;

“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 Regulator, the European Banking Authority or any other relevant authority, which are applicable to Banco Santander (on a standalone basis) or the Group (on a consolidated basis);

“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 and amending Regulation (EU) No. 648/2012 or such other regulation as may come into effect in place thereof;

“FSB TLAC Term Sheet” means the Total Loss-absorbing Capacity (TLAC) term sheet set forth in the document dated 9 November 2015 published by the Financial Stability Board, entitled “Principles on Loss-absorbing and Recapitalization Capacity of G-SIBs in Resolution,” as amended from time to time.

“MREL” means the “minimum requirement for own funds and eligible liabilities” for credit institutions under the BRRD, set in accordance with Article 45 of the BRRD (as transposed in Spain), Commission Delegated Regulation (EU) 2016/1450 of 23 May 2016, supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities, or any successor requirement under EU legislation and relevant implementing legislation and regulation in Spain.

“Principal Paying Agent” means any Person (which may include Banco Santander) authorized by Banco Santander to pay the principal of, or any premium or interest on, or any Additional Amounts with respect to, the debt securities of any series on behalf of Banco Santander. Unless otherwise specified in the applicable prospectus supplement, The Bank of New York Mellon acting through its London Branch will act as the Principal Paying Agent in respect of the debt securities of any series.

“Person” means any individual, company, corporation, firm, partnership, joint venture, association, organization, state or agency of a state or other entity, whether or not having separate legal personality.

“Qualifying Notes” means, with respect to each series of second ranking senior debt securities and each series of subordinated debt securities, at any time, any securities issued directly by Banco Santander that have terms not otherwise materially less favorable to the holders of the second ranking senior debt securities of such series or subordinated debt securities of such series than the terms of the second ranking senior debt securities of such series or subordinated debt securities of such series, as applicable, provided that Banco Santander shall have delivered a certificate signed by two directors of Banco Santander to that effect to the Trustee not less than five Business Days prior to (x) in the case of a substitution of the second ranking senior debt securities of any series or the subordinated debt securities of any series, as applicable, pursuant to “—Substitution and Variation”, the issue date of the relevant securities or (y) in the case of a variation of the second ranking senior debt securities of any series or the subordinated debt securities of any series, as applicable, pursuant to “—Substitution and Variation”, the date such variation becomes effective, provided that such securities shall:

(i) (a) in the case of second ranking senior debt securities, if the TLAC/MREL Requirement Date has occurred, contain terms which comply with the then current requirements for TLAC/MREL-Eligible Instruments as embodied in the Applicable TLAC/MREL Regulations, and (b) in the case of subordinated debt securities, contain terms which comply with the then current requirements for their inclusion in the Tier 2 Capital of Banco Santander; and



(ii) carry the same rate of interest as the second ranking senior debt securities of such series or the subordinated debt securities of such series, as applicable, prior to the relevant substitution or variation pursuant to “—Substitution and Variation”; and

(iii) have the same denomination and aggregate outstanding principal amount as the second ranking senior debt securities of such series or the subordinated debt securities of such series, as applicable, prior to the relevant substitution or variation pursuant to “—Substitution and Variation”; and

(iv) have the same date of maturity and the same dates for payment of interest as the second ranking senior debt securities of such series or the subordinated debt securities of such series, as applicable, prior to the relevant substitution or variation pursuant to “—Substitution and Variation”; and

(v) have at least the same ranking as the second ranking senior debt securities of such series or the subordinated debt securities of such series, as applicable; and

(vi) not, immediately following such substitution or variation, (a) in the case of second ranking senior debt securities be subject to a TLAC/MREL Disqualification Event, an Alignment Event and/or a tax event that would entitle Banco Santander to redeem the debt securities as set forth under “—Redemption and Repurchase—Early Redemption for Taxation Reasons”; and (b) in the case of subordinated debt securities be subject to a Capital Disqualification Event and/or a tax event that would entitle Banco Santander to redeem the debt securities as set forth under “—Redemption and Repurchase—Early Redemption for Taxation Reasons”; and

(vii) be listed or admitted to trading on any stock exchange as selected by Banco Santander, if the second ranking senior debt securities of such series or the subordinated debt securities of such series, as applicable, were listed or admitted to trading on a stock exchange immediately prior to the relevant substitution or variation pursuant to “—Substitution and Variation.”

“Relevant Resolution Authority” means the Spanish Fund for the Orderly Restructuring of Banks or the European Single Resolution Mechanism, as the case may be, according to Law 11/2015, and any other entity with the authority to exercise the Bail-in Power or any other resolution power from time to time.

“Regulator” means the European Central Bank, or such other or successor authority exercising primary bank supervisory authority, in each case with respect to prudential matters in relation to Banco Santander and/or the Group.

“Supervisory Permission” means, in relation to any action, such supervisory permission (or, as appropriate, waiver) from the Regulator and/or the Relevant Resolution Authority as is required therefor under Applicable Banking Regulations.

“Tier 2 Capital” means at any time, with respect to Banco Santander or the Group, as the case may be, the Tier 2 capital of Banco Santander or the Group, respectively, as calculated by Banco Santander in accordance with Chapter 4 (Tier 2 capital) of Title I (Elements of own funds) of Part Two (Own Funds) of the CRR and/or Applicable Banking Regulations at such time, including any applicable transitional, phasing in or similar provisions.

“Tier 2 Instrument” means any contractually subordinated obligation (*créditos subordinados*) of Banco Santander according to Article 92.2° of the Spanish Insolvency Law, ranking as a tier 2 instrument (*instrumentos de capital de nivel 2*) under Additional Provision 14.2°(b) of Law 11/2015.

A “TLAC/MREL Disqualification Event” shall have occurred at any time, on or following the TLAC/MREL Requirement Date, that all or part of the outstanding nominal amount of a series of second ranking senior debt securities does not fully qualify as TLAC/MREL-Eligible Instruments of Banco Santander and/or the Group, except where such non-qualification (i) was reasonably foreseeable as at the issue date of such series or (ii) is due solely to the remaining maturity of the second ranking senior debt securities of such series being less than any period



prescribed for TLAC/MREL-Eligible Instruments by the Applicable TLAC/MREL Regulations or (iii) is as a result of the second ranking senior debt securities of such series being bought back by or on behalf of Banco Santander or a buy back of the second ranking senior debt securities of such series which is funded by or on behalf of Banco Santander.

For the purpose of paragraph (i) of this definition, the circumstances where any non-qualification of any series of second ranking senior debt securities as TLAC/MREL-Eligible Instruments shall not be “reasonably foreseeable” shall, without limitation, be deemed to include where such non-qualification arises as a result of (a) any legislation which gives effect to the EC Proposals in the Kingdom of Spain differing in any respect from the form of the EC Proposals as published by the European Commission on 23 November 2016 (the “Draft EC Proposals”) (including if the EC Proposals are not implemented in full in the Kingdom of Spain), or (b) the official interpretation or application of the Draft EC Proposals or the EC Proposals as implemented in the Kingdom of Spain (including any interpretation or pronouncement by any relevant court, tribunal or authority) differing in any respect from the manner in which the Draft EC Proposals have been reflected herein.

“TLAC/MREL Eligible Instrument” means an instrument that complies with the TLAC/MREL Requirements.

“TLAC/MREL Requirement Date” means the time from which Banco Santander and/or the Group is obliged to meet any TLAC/MREL Requirements.

“TLAC/MREL Requirements” means the total loss-absorbing capacity requirements and/or minimum requirement for own funds and eligible liabilities applicable to Banco Santander and/or the Group under the Applicable TLAC/MREL Regulations.

**General**

The debt securities are not deposits and are not insured or guaranteed by the U.S. Federal Deposit Insurance Corporation or any other government agency of the United States, Spain or any other jurisdiction.

The debt securities will be direct, unconditional and unsecured debt obligations of Banco Santander. The indentures do not limit the amount of debt securities that Banco Santander may issue. Banco Santander may issue debt securities in one or more series. The relevant prospectus supplement and any related issuer free writing prospectus for any particular series of debt securities will describe the terms of the offered debt securities, including but not limited to, some or all of the following terms:

- whether they are ordinary senior debt securities, second ranking senior debt securities or subordinated debt securities;
- the rank of such ordinary senior debt securities, second ranking senior debt securities or subordinated debt securities if different from that set forth in this prospectus;
- with respect to the subordinated debt securities, whether the payment of interest can be deferred, whether the payment of principal can be deferred, the subordination terms, if different from those set forth in this prospectus, and the redemption terms and the events of default applicable to each series of the subordinated debt securities, if different from those set forth in this prospectus;
- with respect to the second ranking senior debt securities, the redemption terms and the events of default applicable to each series of the second ranking senior debt securities, if different from those set forth in this prospectus;
- their specific designation, authorized denomination and aggregate principal amount (and any limitations of such aggregated principal amount);
- the price or prices at which they will be issued;
- the date or maturity of the debt securities;
- the interest rate or rates, or how to calculate the interest rate or rates;



- the date or dates from which interest, if any, will accrue or the method, if any, by which such date or dates will be determined;
- whether payments are subject to certain conditions that relate to our financial condition, including our capital ratios;
- the times and places at which any interest payments are payable;
- any modifications or additions to mandatory or optional redemption, including the amount of any premium;
- any modifications or additions to the events of default with respect to the debt securities offered;
- any provisions relating to conversion or exchange for other securities issued by us;
- the currency or currencies in which they are denominated and in which Banco Santander will make any payments;
- any index used to determine the amount of any payments on the debt securities;
- any restrictions that apply to the offer, sale and delivery of the debt securities and the exchange of debt securities of one form for debt securities of another form;
- whether and under what circumstances, if other than those described in this prospectus, Banco Santander will pay additional amounts on the debt securities and whether, and on what terms, if other than those described in this prospectus, Banco Santander may redeem the debt securities following those developments;
- the clearing system in which such debt securities will be settled and cleared; and
- any listing on a securities exchange.

Holders of debt securities shall have no voting rights except those described under the heading “—*Modification and Waiver*” below.

### Payments of Interest

Banco Santander will make any payments of interest and principal on any particular series of debt securities on the dates and, in the case of payments of interest, at the rate or rates, that Banco Santander sets out in, or that are determined by the method of calculation described in, the relevant prospectus supplement. All payments in respect of the debt securities will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment (including FATCA, any regulations or agreements thereunder, any official interpretation thereof, any intergovernmental agreements with respect thereto, or any law implementing an intergovernmental agreement or any regulations or official interpretations relating thereto), but without prejudice to the provisions described in “—*Additional Amounts*” below.

### Status of the Debt Securities

#### *Ordinary senior debt securities*

Unless the relevant prospectus supplement provides otherwise, the payment obligations of Banco Santander under the ordinary senior debt securities on account of principal constitute direct, unconditional, unsubordinated and unsecured obligations (*créditos ordinarios*) of Banco Santander and, upon the insolvency of Banco Santander (and unless they qualify as subordinated claims (*créditos subordinados*) pursuant to Article 92.1° or 92.3° to 92.7° of the Spanish Insolvency Law), but subject to any other ranking that may apply as a result of any mandatory provision of law (or otherwise), rank *pari passu* and rateably without preference among themselves and with all other unsecured and unsubordinated indebtedness (*créditos ordinarios*) of Banco Santander, present or future (other than second ranking senior debt securities and claims in respect of Senior Parity Liabilities which will rank junior to them as set out below) and senior to any present and future subordinated obligations (*créditos subordinados*) of Banco Santander.



*Claims of holders of ordinary senior debt securities in respect of interest accrued but unpaid as of the commencement of any insolvency procedure in respect of Banco Santander shall constitute subordinated claims (créditos subordinados) against Banco Santander ranking in accordance with the provisions of Article 92.3° of the Spanish Insolvency Law and no further interest shall accrue from the date of the declaration of insolvency of Banco Santander.*

*The obligations of Banco Santander under the ordinary senior debt securities are subject to the Bail-in Power.*

**Second ranking senior debt securities**

Unless the relevant prospectus supplement provides otherwise, the payment obligations of Banco Santander under the second ranking senior debt securities on account of principal constitute direct, unconditional, unsubordinated and unsecured obligations (*créditos ordinarios*) of Banco Santander and, upon the insolvency of Banco Santander (and unless they qualify as subordinated claims (*créditos subordinados*) pursuant to Article 92.1° or 92.3° to 92.7° of the Spanish Insolvency Law), but subject to any other ranking that may apply as a result of any mandatory provision of law (or otherwise), rank (i) within the senior and unsecured liabilities (*créditos ordinarios*) class of Banco Santander (a) junior to the claims in respect of principal under all Senior Higher Priority Liabilities and (b) *pari passu* with the claims in respect of principal under any Senior Parity Liabilities, and (ii) senior to any present and future subordinated obligations (*créditos subordinados*) of Banco Santander.

Claims for principal in respect of second ranking senior debt securities are intended to constitute Statutory Second Ranking Senior Liabilities ranking below Statutory Ordinary Senior Liabilities pursuant to any Senior Ranking Amendment Legislation (to the extent permitted by such Senior Ranking Amendment Legislation) but ahead of claims in respect of present and future subordinated obligations (*créditos subordinados*) of Banco Santander.

If the Senior Ranking Amendment Legislation (if any) makes it a condition for Statutory Second Ranking Senior Liabilities or other instruments comprising the most junior sub-class within the unsubordinated and unsecured liabilities (*créditos ordinarios*) class (such as the second ranking senior debt securities), upon the insolvency (*concurso*) of Banco Santander, to rank below the obligations under any Statutory Ordinary Senior Liabilities or the rest of unsubordinated and unsecured liabilities (*créditos ordinarios*) (such as those under all Senior Higher Priority Liabilities), that the relevant contractual documentation in respect of Statutory Second Ranking Senior Liabilities or other instruments comprising the most junior sub-class within the unsubordinated and unsecured liabilities (*créditos ordinarios*) class, explicitly refers to their ranking relative to the Statutory Ordinary Senior Liabilities or the rest of unsubordinated and unsecured liabilities (*créditos ordinarios*), the holders (by virtue of their subscription and/or purchase and holding of the relevant second ranking senior debt securities) will be deemed to have irrevocably accepted the status of the second ranking senior debt securities described above for the purpose of the Senior Ranking Amendment Legislation.

Banco Santander agrees with respect to any series of second ranking senior debt securities and each holder of second ranking senior debt securities of any series, by his or her acquisition of a second ranking senior debt security will be deemed to have agreed to the ranking as described herein. Each such holder will be deemed to have irrevocably waived his or her rights of priority which would otherwise be accorded to him or her under the laws of Spain, to the extent necessary to effectuate the ranking provisions of the second ranking senior debt security. In addition, each holder of second ranking senior debt securities of any series by his or her acquisition of such second ranking senior debt securities authorizes and directs the applicable trustee on his or her behalf to take such action as may be necessary or appropriate to effectuate the ranking of such second ranking senior debt securities as provided herein and appoints the applicable trustee his or her attorney-in-fact for any and all such purposes.

*Claims of holders of second ranking senior debt securities in respect of interest accrued but unpaid as of the commencement of any insolvency procedure in respect of Banco Santander shall constitute subordinated claims (créditos subordinados) against Banco Santander ranking in accordance with the provisions of Article 92.3° of the Spanish Insolvency Law and no further interest shall accrue from the date of the declaration of insolvency of Banco Santander.*

*The obligations of Banco Santander under the second ranking senior debt securities are subject to the Bail-in Power.*



“Senior Higher Priority Liabilities” means the unsubordinated and unsecured obligations (*créditos ordinarios*) of Banco Santander (which will include, among others, the ordinary senior debt securities), other than those under the second ranking senior debt securities and the Senior Parity Liabilities.

“Senior Parity Liabilities” means any other unsubordinated and unsecured obligations (*créditos ordinarios*) of Banco Santander which, by law and/or by their terms, rank *pari passu* with Banco Santander’s obligations under the second ranking senior debt securities at that time.

“Senior Ranking Amendment Legislation” means, if and as applicable, a Spanish law that expressly provides for the possibility that, upon the insolvency (*concurso*) of a Regulated Entity issuer of debt securities (i) the obligations under certain unsubordinated and unsecured liabilities (*créditos ordinarios*) (the “Statutory Second Ranking Senior Liabilities”) may rank below those of other unsubordinated and unsecured liabilities (*créditos ordinarios*) with higher priority ranking (the “Statutory Ordinary Senior Liabilities”), or (ii) different sub-classes within the unsubordinated and unsecured liabilities (*créditos ordinarios*) class are contractually agreed.

### ***Subordinated Debt Securities***

Unless the relevant prospectus supplement provides otherwise, the payment obligations of Banco Santander under the subordinated debt securities on account of principal constitute direct, unconditional, unsecured and subordinated obligations (*créditos subordinados*) of Banco Santander according to Article 92.2° of the Spanish Insolvency Law and, in accordance with Additional Provision 14.2° of Law 11/2015, but subject to any other ranking that may apply as a result of any mandatory provision of law (or otherwise), upon the insolvency of Banco Santander (unless they qualify as subordinated claims (*créditos subordinados*) pursuant to Articles 92.3° to 92.7° of the Spanish Insolvency Law) rank for so long as the obligations of Banco Santander in respect of the subordinated debt securities constitute Tier 2 Instruments:

- (i) *pari passu* among themselves and with (i) all other claims for principal in respect of Tier 2 Instruments which are not subordinated obligations under Articles 92.3° to 92.7° of the Spanish Insolvency Law, and (ii) any other subordinated obligations (*créditos subordinados*) which by law and/or by their terms, to the extent permitted by Spanish law, rank *pari passu* with Banco Santander’s obligations under the relevant subordinated debt securities;
- (ii) junior to (i) any unsubordinated obligations (*créditos ordinarios*) of Banco Santander, (ii) any subordinated obligations (*créditos subordinados*) of Banco Santander under Article 92.1° of the Spanish Insolvency Law, (iii) any claim for principal in respect of Senior Subordinated Liabilities which are not subordinated obligations under Articles 92.3° to 92.7° of the Spanish Insolvency Law and (iv) any other subordinated obligations (*créditos subordinados*) which by law and/or by their terms, to the extent permitted by Spanish law, rank senior to Banco Santander’s obligations under the relevant subordinated debt securities; and
- (iii) senior to (i) any claims for principal in respect of Additional Tier 1 Instruments of Banco Santander, (ii) any subordinated obligations (*créditos subordinados*) under Articles 92.3° to 92.7° of the Spanish Insolvency Law and (iii) any other subordinated obligations (*créditos subordinados*) of Banco Santander which by law and/or by their terms, to the extent permitted by Spanish law, rank junior to the obligations of Banco Santander under the relevant subordinated debt securities.

Banco Santander agrees with respect to any series of subordinated debt securities and each holder of subordinated debt securities of any series, by his or her acquisition of a subordinated debt security, will be deemed to have agreed to the above described subordination. Each such holder will be deemed to have irrevocably waived his or her rights of priority which would otherwise be accorded to him or her under the laws of Spain, to the extent necessary to effectuate the subordination provisions of the subordinated debt security. In addition, each holder of subordinated debt securities of any series by his or her acquisition of the securities authorizes and directs the applicable trustee on his or her behalf to take such action as may be necessary or appropriate to effectuate the subordination of the relevant subordinated debt securities as provided in the subordinated indenture and as summarized herein and appoints the applicable trustee his or her attorney-in-fact for any and all such purposes.

*Claims of holders of subordinated debt securities in respect of interest accrued but unpaid as of the commencement of any insolvency procedure in respect of Banco Santander shall constitute subordinated claims (créditos subordinados) against Banco Santander ranking in accordance with the provisions of Article 92.3° of the Spanish Insolvency Law and no further interest shall accrue from the date of the declaration of insolvency of Banco Santander.*



*The obligations of Banco Santander under the subordinated debt securities are subject to the Bail-in Power.*

“Senior Subordinated Liabilities” means any contractually subordinated obligation (*créditos subordinados*) of Banco Santander according to Article 92.2° of the Spanish Insolvency Law, other than an Additional Tier 1 Instrument or a Tier 2 Instrument.

#### **Additional Amounts**

Unless otherwise specified in the relevant prospectus supplement, all amounts payable (whether in respect of principal, redemption amount, interest or otherwise) in respect of any series of debt securities 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 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, unless the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law. In that event, Banco Santander shall pay such additional amounts (“Additional Amounts”) as will result in receipt by the holders of the debt securities of the particular series of such amounts as would have been received by them had no such withholding or deduction been required.

However, Banco Santander shall not be required to pay any Additional Amounts in respect of any debt securities:

- (i) to, or to a third party on behalf of, a holder if the holder or the beneficial owner of debt securities is liable for such taxes, duties, assessments or governmental charges in respect of such debt securities by reason of his having some connection with Spain other than the mere holding of such debt security or;
- (ii) to, or to a third party on behalf of, a holder in respect of whose series of debt securities Banco Santander does not receive such information as may be required in order to comply with the applicable Spanish tax reporting obligations, including but not limited to the receipt in a timely manner of a duly executed and completed certificate in accordance with Law 10/2014 and Royal Decree 1065/2007, as amended, and any implementing legislation or regulation; or
- (iii) to, or to a third party on behalf of, a holder of debt securities of any series if the holder or beneficial owner fails to make any necessary claim or to comply with any certification, identification or other requirements concerning the nationality, residence, identity or connection with the taxing jurisdiction of such holder or beneficial owner, if such claim or compliance is required by statute, treaty, regulation or administrative practice of Spain as a condition to relief or exemption from such taxes; or
- (iv) presented for payment (where presentation is required) more than 30 days after the Relevant Date, except to the extent that the relevant holder would have been entitled to such Additional Amounts on presenting the same for payment on the expiry of such period of 30 days; or
- (v) in relation to any estate, inheritance, gift, sales, transfer or similar taxes; or
- (vi) to, or to a third party on behalf of, individuals resident for tax purposes in the Kingdom of Spain; or
- (vii) to, or to a third party on behalf of, a Spanish-resident legal entity subject to Spanish corporation tax if the Spanish tax authorities determine that the debt securities of such series do not comply with exemption requirements specified in the Reply to a Consultation of the Directorate General for Taxation (*Dirección General de Tributos*) dated 27 July 2004 and require a withholding to be made; or
- (viii) where the withholding or deduction is required pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to Sections 1471 through 1474 of the Code (“FATCA”), any regulations or agreements thereunder, any official interpretations thereof, any



intergovernmental agreements with respect thereto (including the intergovernmental agreement between the United States and Spain on the implementation of FATCA), or any law implementing an intergovernmental agreement or any regulations or official interpretations relating thereto; or

(viii) in the case of any combination of items listed in (i) through (viii) above.

Additional Amounts will also not be paid with respect to any payment to a holder who is a fiduciary, a partnership, a limited liability company or person other than the sole beneficial owner of that payment, to the extent that payment would be required by the laws of Spain (or any political subdivision thereof) to be included in the income, for tax purposes, of a beneficiary or settlor with respect to the fiduciary, a member of that partnership, an interest holder in that limited liability company or a beneficial owner who would not have been entitled to the Additional Amounts had it been the holder.

For the purposes of (iv) above, the “Relevant Date” means, in respect of any payment, the date on which such payment first becomes due and payable, but if the full amount of the moneys payable has not been received by the Trustee on or prior to such due date, it means the first date on which, the full amount of such moneys having been so received and being available for payment to holders of debt securities, notice to that effect shall have been duly given to the holders of the relevant series of debt securities in accordance with the indenture.

Unless the context otherwise requires, any reference in this “Additional Amounts” section to “principal” shall include any premium payable, or Redemption Amount and any other amounts in the nature of principal payable pursuant to the relevant indenture and “interest” shall include all amounts payable described under “—*Payments of Interest*” above and any other amounts in the nature of interest payable under the relevant indenture.

As used in this “Additional Amounts” section, the term “Redemption Amount” means, as appropriate, the Maturity Redemption Amount, Early Redemption Amount (Tax), Early Redemption Amount (Capital Disqualification Event), Early Redemption Amount (Call), Early Redemption Amount (Put) and Early Termination Amount or such other amount in the nature of a redemption amount as may be specified in, or determined in accordance with the provisions of, the relevant prospectus supplement.

Except where the context requires otherwise, any reference in the prospectus supplement to payment of principal of or interest on a debt security shall be deemed to include any Additional Amounts payable with respect thereto.

### **Additional Issuances**

Banco Santander may, without the consent of the holders of the debt securities of any series, issue additional debt securities of such series having the same ranking and same interest rate, maturity date, redemption terms and other terms as the debt securities of such series described in the relevant prospectus supplement except for the price to the public, original interest accrual date, issue date and first interest payment date, provided however that such additional debt securities will not have the same CUSIP, ISIN or other identifying number as the outstanding debt securities of the relevant series unless the additional debt securities are fungible with the outstanding debt securities of the relevant series for U.S. federal income tax purposes. Any such additional debt securities, together with the debt securities of the relevant series offered by the relevant prospectus supplement, will constitute a single series of securities under the relevant indenture. There is no limitation on the amount of debt securities that Banco Santander may issue under the relevant indentures.

### **Redemption and Repurchase**

#### ***Early Redemption for Taxation Reasons***

Unless otherwise specified in the relevant prospectus supplement, if, in relation to the debt securities of any series, (i) as a result of any change in the laws or regulations of Spain or of any political subdivision thereof or any authority or agency therein or thereof having power to tax or in the interpretation or administration of any such laws or regulations which becomes effective on or after the date of issue of the first issued debt securities of such series or any earlier date specified in the relevant prospectus supplement, Banco Santander shall determine that (a) it would be required to pay additional amounts as described in “—*Additional Amounts*” above or (b) it would not be entitled to claim a deduction in computing tax liabilities in Spain in respect of any interest to be paid on the next interest payment date on such series of debt securities or the value of such deduction to Banco Santander would be





materially reduced or (c) the applicable tax treatment of the debt securities of such series changes in a material way that was not reasonably foreseeable at the issue date and (ii) such circumstances are evidenced by the delivery by Banco Santander to the Trustee of a certificate signed by two directors of Banco Santander stating that such circumstances prevail and describing the facts leading thereto, an opinion of independent legal advisers of recognized standing to the effect that such circumstances prevail and, in the case of second ranking senior debt securities, a copy of the Supervisory Permission for the redemption, if required, or, in the case of subordinated debt securities, a copy of the Regulator's consent for the redemption. Banco Santander may, at its option and having given no less than 30 nor more than 60 days' notice (ending, in the case of debt securities which bear interest at a floating rate, on a day upon which interest is payable) to the holders of the debt securities of such series in accordance with the terms described under "—Notices" below (which notice shall be irrevocable), redeem in whole, but not in part, the outstanding debt securities of such series (in the case of subordinated debt securities and second ranking senior debt securities in accordance with the requirements of Applicable Banking Regulations in force at the relevant time) at their early tax redemption amount (the "Early Redemption Amount (Tax)") (which shall be their principal amount or at such other Early Redemption Amount (Tax) as may be specified in or determined as described in the relevant prospectus supplement), together with accrued interest (if any) thereon; *provided, however*, that (i) in the case of (a) above, no such notice of redemption may be given earlier than 90 days (or, in the case of debt securities which bear interest at a floating rate a number of days which is equal to the aggregate of the number of days falling within the then current interest period applicable to the debt securities of such series plus 60 days) prior to the earliest date on which Banco Santander would be obliged to pay such additional amounts were a payment in respect of the debt securities of such series then due and (ii) in the case of second ranking senior debt securities and subordinated debt securities, redemption for taxation reasons may only take place in accordance with Applicable Banking Regulations in force at the relevant time and subject to Banco Santander obtaining, with respect to the second ranking senior debt securities of such series, the prior Supervisory Permission therefor, if required, or with respect to the subordinated debt securities of such series, the prior consent of the Regulator.

Article 78(4) of the CRR provides that the Regulator may only permit the redemption of subordinated debt securities of any series before the fifth anniversary of the issue date of subordinated debt securities of such series for taxation reasons if, in addition to meeting one of the conditions referred to in paragraphs (a) or (b) of Article 78(1) of the CRR (as described below), there is a change in the applicable tax treatment of the subordinated debt securities of such series and the institution demonstrates to the satisfaction of the Regulator that such change is material and was not reasonably foreseeable at the issue date of subordinated debt securities of such series.

***Early Redemption of Second Ranking Senior Debt Securities for a TLAC/MREL Disqualification Event***

Unless otherwise specified in the relevant prospectus supplement, if, in relation to second ranking senior debt securities of any series, following the TLAC/MREL Requirement Date, a TLAC/MREL Disqualification Event has occurred and is continuing and such circumstances are evidenced by the delivery by Banco Santander to the Trustee of a certificate signed by two directors of Banco Santander stating that such circumstances prevail and describing the facts leading thereto, an opinion of independent legal advisers of recognized standing to the effect that such circumstances prevail and a copy of the Supervisory Permission for the redemption, if required, then Banco Santander may, subject to being permitted by Applicable TLAC/MREL Regulations and having given not less than 30 nor more than 60 days' notice (ending, in the case of second ranking senior debt securities which bear interest at a floating rate, on a day upon which interest is payable) to the holders of the second ranking senior debt securities of such series in accordance with the terms described under "—Notices" below (which notice shall be irrevocable), redeem in whole but not in part the outstanding second ranking senior debt securities of such series at their principal amount, together with any accrued and unpaid interest thereon to (but excluding) the date fixed for redemption (the "Early Redemption Amount (TLAC/MREL Disqualification Event)").

Redemption on the basis of a TLAC/MREL Disqualification Event is subject to Banco Santander obtaining prior Supervisory Permission therefor, if required, and may only take place in accordance with Applicable TLAC/MREL Regulations in force at the relevant time.

***Early Redemption of Subordinated Debt Securities for Capital Disqualification Event***

Unless otherwise specified in the relevant prospectus supplement, if, in relation to subordinated debt securities of any series, (i) there is a Capital Disqualification Event and (ii) such circumstances are evidenced by the delivery by Banco Santander to the Trustee of a certificate signed by two directors of Banco Santander stating that the said circumstances prevail and describing the facts leading thereto and a copy of the Regulator's consent to the



redemption, Banco Santander may, at its option and having given no less than 30 nor more than 60 days' notice (ending, in the case of subordinated debt securities which bear interest at a floating rate, on a day upon which interest is payable) to the holders of the subordinated debt securities of such series in accordance with the terms described under "*Notices*" below (which notice shall be irrevocable), redeem in whole but not in part the outstanding subordinated debt securities of such series in accordance with the requirements of Applicable Banking Regulations in force at the relevant time) at their early capital disqualification event redemption amount (the "Early Redemption Amount (Capital Disqualification Event)") (which shall be their principal amount or such other Early Redemption Amount (Capital Disqualification Event) as may be specified in or determined in the relevant prospectus supplement), together with any accrued and unpaid interest thereon to (but excluding) the date fixed for redemption; *provided, however*, that the Regulator consents to redemption of the subordinated debt securities of such series.

Redemption for regulatory reasons is subject to the prior consent of the Regulator and may only take place in accordance with Applicable Banking Regulations in force at the relevant time.

Article 78(4) of the CRR provides that the Regulator may only permit the redemption of subordinated debt securities of any series before the fifth anniversary of the issue date of the subordinated debt securities of such series for regulatory reasons if, in addition to meeting one of the conditions referred to in paragraphs (a) or (b) of Article 78(1) of the CRR (as described below), there is a change in the regulatory classification of the subordinated debt securities of such series that would be likely to result in their exclusion from own funds or reclassification as a lower quality form of own funds, the Regulator considers such change to be sufficiently certain and the institution demonstrates to the satisfaction of the Regulator that the regulatory classification was not reasonably foreseeable at the issue date of the subordinated debt securities of such series.

#### ***Optional Early Redemption (Call)***

Unless otherwise specified in the relevant prospectus supplement, Banco Santander may, upon the expiration of the appropriate notice (described below) and subject to such conditions as may be specified in the relevant prospectus supplement (and subject, in the case of second ranking senior debt securities or subordinated debt securities to the prior consent of the Regulator) redeem in whole (but not, unless and to the extent that the relevant prospectus supplement specifies otherwise, in part) the debt securities of such series at their call early redemption amount (the "Early Redemption Amount (Call)") (which shall be their principal amount or such other Early Redemption Amount (Call) as may be specified in or determined in the relevant prospectus supplement), together with any accrued interest (if any) thereon to (but excluding) the date fixed for redemption.

In the case of second ranking senior debt securities, early redemption at the option of Banco Santander may only take place in accordance with Applicable TLAC/MREL Regulations and subject to Banco Santander obtaining prior Supervisory Permission thereof as required under Applicable TLAC/MREL Regulations, if required.

In the case of second ranking senior debt securities or subordinated debt securities, redemption at the option of Banco Santander is subject to the prior consent of the Regulator and may only take place in accordance with Applicable Banking Regulations in force at the relevant time. In accordance with Article 63(j) of the CRR, subordinated securities may not be called, redeemed or repurchased or repaid before five years after the date of issuance.

Article 78(1) of the CRR provides that the Regulator will give its consent to a redemption of subordinated debt securities such circumstances provided that either of the following conditions is met:

- (a) on or before such redemption of the subordinated debt securities, the institution replaces the subordinated debt securities with own funds instruments of an equal or higher quality on terms that are sustainable for the income capacity of the institution; or
- (b) the institution has demonstrated to the satisfaction of the Regulator that its own funds would, following such redemption, exceed the requirements laid down in Article 92(1) of the CRR and the combined buffer requirement as defined in point (6) of Article 128 of the CRD IV Directive by a margin that the Regulator may consider necessary on the basis of Article 104(3) of the CRD IV Directive.



“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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC or such other directive as may come into effect in place thereof.

### ***Partial Redemption***

If the debt securities of any series are to be redeemed in part only on any date in accordance with “—*Optional Early Redemption (Call)*” above, the debt securities to be redeemed will be selected not more than 60 days nor less than 30 days prior to such redemption date by the Trustee *pro rata* to their principal amounts, or by lot or by such method as the Trustee deems fair and appropriate, provided that the amount redeemed in respect of the debt securities of such series shall be equal to the minimum authorized denomination or an integral multiple thereof, subject always to compliance with all applicable laws and the requirements of any clearing system on which the debt securities of such series may be cleared and of any listing authority, stock exchange and/or quotation system on which the debt securities of such series may be listed and/or quoted. In the case of debt securities issued in global form, DTC shall select Book-Entry Interests in such debt securities as described under “—*Form of Securities; Book-Entry System*” below. The Trustee shall not be liable for selections made by it in accordance with this paragraph or for selections made by DTC. No debt securities of \$2,000 or less can be redeemed in part.

In the case of second ranking senior debt securities and subordinated debt securities partial redemption is subject to the prior consent of the Regulator and may only take place in accordance with Applicable Banking Regulations in force at the relevant time.

### ***Optional Early Redemption (Put) of Ordinary Senior Debt Securities***

Unless otherwise specified in the relevant prospectus supplement, Banco Santander shall, upon the exercise of the relevant option by a holder of ordinary senior debt securities of any series, redeem the ordinary senior debt securities of such series on the date or the dates specified in the relevant prospectus supplement at the put early redemption amount (the “Early Redemption Amount (Put)”) (which shall be the principal amount or such other Early Redemption Amount (Put) as may be specified in or determined in the relevant prospectus supplement), together with accrued interest (if any) thereon. In order to exercise such option, the holder of the ordinary senior debt securities of such series must, not less than 60 days before the date so specified (or such other period as may be specified in the relevant prospectus supplement), deposit a duly completed redemption notice in the form which is available from the specified office of the Trustee specifying the aggregate principal amount in respect of which such option is exercised (which must be the minimum denomination specified in the relevant prospectus supplement or an integral multiple thereof). Such notice must also be delivered in accordance with the requirements of the applicable clearing system. No option exercised may be withdrawn (except as provided in the relevant indenture).

The Early Redemption (Put) shall not apply in the case of second ranking senior debt securities or subordinated debt securities of any series and holders of second ranking senior debt securities or subordinated debt securities of any series may not redeem the second ranking senior debt securities or subordinated debt securities of such series prior to the maturity date of such series.

A holder of any series of ordinary senior debt securities may not exercise such option in respect of any series of ordinary senior debt securities which is the subject of an exercise by Banco Santander of its option to redeem such series of ordinary senior debt securities under “—*Early Redemption for Taxation Reasons*” or “—*Optional Early Redemption (Call)*” above.

### ***Notice of Redemption***

For purposes of this section “—*Redemption and Repurchase*”, the appropriate notice to be given by Banco Santander to the Trustee and the holders of the debt securities of such series, shall be signed by two duly authorized officers of Banco Santander and shall specify:

- the series of debt securities subject to redemption;
- whether such series of debt securities is to be redeemed in whole or in part only and, if in part only, the aggregate principal amount of the debt securities series which is to be redeemed, except in the case of “—*Early Redemption for Taxation Reasons*”, “—*Early Redemption of Subordinated Debt Securities for Capital Disqualification Event*” and “—*Early Redemption of Second ranking senior debt securities for a TLAC/MREL Disqualification Event*”, which must be redeemed in full;



- the due date for such redemption which shall be a Business Day, which shall be not less than 30 days nor more than 60 days (or such lesser period as may be specified in the relevant prospectus supplement) after the date on which such notice is validly given and which is, in the case of debt securities which bear interest at a floating rate, a date upon which interest is payable; and
- the Early Redemption Amount (Tax), Early Redemption Amount (TLAC/MREL Disqualification Event), Early Redemption Amount (Capital Disqualification Event), Early Redemption Amount (Call) or Early Redemption Amount (Put), as applicable, at which the debt securities of such series are to be redeemed.

Any such notice shall be irrevocable, and the delivery thereof shall oblige Banco Santander to make the redemption therein specified (unless the Bail-in Power is exercised by the Relevant Resolution Authority before the occurrence of such redemption).

***Repurchase of Debt Securities***

Banco Santander and any of its subsidiaries or any third party designated by any of them, may at any time repurchase debt securities in the open market or otherwise and at any price.

In the case of second ranking senior debt securities of any series, the repurchase of the senior-non preferred debt securities of such series by Banco Santander or any of its subsidiaries shall take place in accordance with Applicable TLAC/MREL Regulations in force at the relevant time and subject to Banco Santander obtaining prior Supervisory Permission thereof, if required.

In the case of subordinated debt securities of any series, the repurchase of the subordinated debt securities of such series by Banco Santander or any of its subsidiaries shall take place in accordance with Applicable Banking Regulations in force at the relevant time. Under the current Applicable Banking Regulations, an institution requires the prior permission of the Regulator (Article 77(b) of CRR) to effect the repurchase of Tier 2 Instruments, and these may not be repurchased before five years after the date of issuance (Article 63 (j) of CRR).

**Modification and Waiver**

***Modification***

Banco Santander and the Trustee may make certain modifications and amendments of the applicable indenture with respect to any series of debt securities without the consent of the holders of the debt securities of that series, including for, but not limited to, any of the following purposes:

- to evidence the succession of another corporation to Banco Santander and the assumption by any such successor of the covenants of Banco Santander under the relevant indenture and in the debt securities of any series;
- to add to the covenants of Banco Santander for the benefit of the holders of all or any series of debt securities (and, if such covenants are to be for the benefit of less than all series of debt securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power conferred upon Banco Santander under the relevant indenture;
- to add any additional Events of Default;
- to change or eliminate any of the provisions of the relevant indenture, or any supplemental indenture, provided that any such change or elimination shall become effective only when there is no outstanding debt security of any series created prior to the execution of such supplemental indenture that is entitled to the benefit of such provision or as to which such supplemental indenture would apply;
- to secure the debt securities of any series;



- to change any place of payment under certain circumstances, so long as a place of payment as required by the relevant indenture is maintained;
- to cure any ambiguity, to correct or supplement any provision in the relevant indenture which may be defective or inconsistent with any other provision of the relevant indenture or in any supplemental indenture;
- to evidence and provide for the acceptance of appointment under the relevant indenture by a successor Trustee with respect to the debt securities of one or more series and to add to or change any of the provisions of the relevant indenture as shall be necessary to provide for or facilitate the administration of the trusts under the relevant indenture by more than one Trustee, pursuant to the requirements of the relevant indenture;
- to change or eliminate any provision of the relevant indenture so as to conform with the current provisions or any future provisions of the Trust Indenture Act;
- with respect to any debt security (including a global security), to amend any such debt security to conform to the description of the terms of such debt security in the prospectus, prospectus supplement, product supplement, pricing supplement or any other similar offering document related to the offering of such debt security.

In addition to the permitted amendments described in the preceding paragraph, Banco Santander and the Trustee may amend or supplement the relevant indenture or the debt securities of any series and the related supplemental indenture without the consent of any holders of the debt securities of such series to conform the provisions of the relevant indenture to this “Description of Debt Securities” section in this registration statement and the applicable prospectus supplement.

Banco Santander may make other modifications and amendments with the consent of the holder or holders of not less than a majority in aggregate outstanding principal amount of the debt securities of the series outstanding under the indenture that are affected by the modification or amendment, voting as one class. However, Banco Santander may not make any modification or amendment without the consent of the holder of each debt security affected that would:

- change the stated maturity of the principal amount of any subordinated debt security;
- reduce the principal amount of or the interest rates, or any premium payable upon the redemption of, or any missed payments, with respect to any debt security;
- change our (or any successor’s) obligation to pay Additional Amounts;
- change the currency of payment;
- impair the right to institute suit for the enforcement of any payment due and payable;
- reduce the percentage in aggregate principal amount of outstanding debt securities of the series necessary to modify or amend the indenture or to waive compliance with certain provisions of the relevant indenture and any Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default (as such terms are defined below and described in the relevant prospectus supplement);
- modify the subordination provisions or the terms of our obligations in respect of the due and punctual payment of the amounts due and payable on the debt securities in a manner adverse to the holders; or
- modify the above requirements.

In addition, material variations in the terms and conditions of debt securities of any series, including modifications relating to subordination, redemption, an Ordinary Senior Debt Security Event of Default, a Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default, (as those terms are defined under “—*Events of Default and Defaults; Limitations of Remedies*” below), may require the non-objection from, or consent of, the Regulator or its successor.



## Events of Default and Defaults; Limitation of Remedies

### *Ordinary Senior Debt Security Event of Default*

Unless the relevant prospectus supplement provides otherwise, an “Ordinary Senior Debt Security Event of Default” with respect to any series of ordinary senior debt securities shall result if:

- (i) *Non-payment*: default is made in the payment of any interest or principal due in respect of the ordinary senior debt securities of that series or any of them and such default continues for a period of seven days (or such other period as may be specified in the relevant prospectus supplement); or
- (ii) *Breach of other obligations*: Banco Santander fails to perform or observe any of its other obligations under or in respect of the ordinary senior debt securities of such series or the ordinary senior debt securities indenture and (except in any case where such failure is incapable of remedy when no such continuation as is hereinafter mentioned will be required) the failure continues for a period of 30-days next following the service by the Trustee on Banco Santander of a notice requiring the same to be remedied; or
- (iii) *Winding up*: any order is made by any competent court or resolution passed for the winding up or dissolution of Banco Santander (except in any such case for the purpose of reconstruction or a merger or amalgamation which has been previously approved by the holders of at least a majority of the outstanding principal amount of the ordinary senior debt securities of that series or a merger with another institution in this case even without being approved by holders of the ordinary senior debt securities of such series, provided that any entity that survives or is created as a result of such merger is given a rating by an internationally recognized rating agency at least equal to the then current rating of Banco Santander at the time of such merger); or
- (iv) *Cessation of business*: Banco Santander ceases or threatens to cease to carry on the whole or a substantial part of its business, save for the purposes of a reorganization (except in any such case for the purpose of reconstruction or a merger, spin-off or amalgamation which has been previously approved by the holders of at least a majority of the outstanding principal amount of the ordinary senior debt securities of that series or a merger with another financial institution or spin-off in each such case even without being approved by holders of the ordinary senior debt securities of such series, provided that any entity that survives or is created as a result of such merger or spin-off is given a rating by an internationally recognized rating agency at least equal to the then current rating of Banco Santander at the time of such merger), or Banco Santander stops or threatens to stop payment of, or is unable to, or admits in writing inability to, pay, its debts (or any class thereof) as they fall due, or is deemed unable to pay its debts pursuant to or for the purposes of any applicable law, or is adjudicated or found bankrupt or insolvent; or
- (v) *Insolvency proceedings*: (a) proceedings are initiated against Banco Santander under any applicable liquidation, insolvency, composition, reorganization or other similar laws, or an application made for the appointment of an administrative or other receiver, manager, administrator or other similar official, or an administrative or other receiver, manager, administrator or other similar official is appointed, in relation to Banco Santander or in relation to the whole or a part of the undertaking or assets of either of them, or an encumbrancer takes possession of the whole or a part of the undertaking or assets of either of them, or a distress, execution, attachment, sequestration or other process is levied, enforced upon, sued or put in force against the whole or a part of the undertaking or assets or any of them and (b) in any case is not discharged within 14 days; or
- (vi) *Arrangements with creditors*: Banco Santander initiates or consents to judicial proceedings relating to itself under any applicable liquidation, insolvency, composition, reorganization or other similar laws or makes a conveyance or assignment for the benefit of, or enters into any composition or other arrangement with, its creditors generally (or any class of its creditors).



Under the terms of the ordinary senior debt securities indenture, no exercise of a resolution tool or resolution power by the Relevant Resolution Authority or any action in compliance therewith shall constitute an Ordinary Senior Debt Security Event of Default.

If any Ordinary Senior Debt Security Event of Default shall occur in relation to any series of ordinary senior debt securities, the Trustee or the holders of at least 25% in outstanding principal amount of the ordinary senior debt securities of that series may at their discretion declare that the ordinary senior debt securities of such series and all interest then accrued thereon shall be forthwith due and payable, whereupon the same shall become immediately due and payable at its early termination amount (the “Early Termination Amount”) (which shall be its principal amount or such other Early Termination Amount as may be specified in or determined in accordance with the relevant prospectus supplement, together with all interest (if any) accrued thereon), without presentment, demand, protest or other notice of any kind, all of which Banco Santander will expressly waive, anything contained in the ordinary senior debt securities of such series to the contrary notwithstanding, unless, prior thereto, all Ordinary Senior Debt Security Events of Default in respect of the ordinary senior debt securities of such series shall have been cured.

Notwithstanding the preceding paragraph, under Spanish law, interest on debt instruments accruing after commencement of insolvency proceedings against the issuer may not be declared as due and payable after the commencement of insolvency proceedings against the issuer.

Notwithstanding any contrary provisions, nothing shall impair the right of a holder, absent the holder’s consent, to sue for any payments due but unpaid with respect to the ordinary senior debt securities.

***Second Ranking Senior Debt Security Event of Default***

Unless the relevant prospectus supplement provides otherwise, subject to the conditions described below, if any of the following events occurs and is continuing with respect to the second ranking senior debt securities of any series it shall constitute a “Second Ranking Senior Debt Security Event of Default”:

- (i) *Non-payment*: default is made in the payment of any interest or principal due in respect of the second ranking senior debt securities of that series or any of them and such default continues for a period of seven days (or such other period as may be specified in the relevant prospectus supplement).
- (ii) *Winding up*: any order is made by any competent court or resolution passed for the winding up or dissolution of Banco Santander (except in any such case for the purpose of reconstruction or a merger or amalgamation which has been previously approved by the holders of at least a majority of the outstanding principal amount of the second ranking senior debt securities of that series or a merger with another institution in this case even without being approved by holders of the second ranking senior debt securities of such series, provided that any entity that survives or is created as a result of such merger is given a rating by an internationally recognized rating agency at least equal to the then current rating of Banco Santander at the time of such merger).

Under the terms of the second ranking senior debt securities indenture, no exercise of a resolution tool or resolution power by the Relevant Resolution Authority or any action in compliance therewith shall constitute a Second Ranking Senior Debt Security Event of Default.

If a Second Ranking Senior Debt Security Event of Default occurs as set forth in paragraph (i) above, then the Trustee or the holders of at least 25% in outstanding principal amount of the second ranking senior debt securities of that series may institute proceedings for the winding up or dissolution of Banco Santander but may take no further action in respect of such default.

If a Second Ranking Senior Debt Security Event of Default occurs as set forth in paragraph (ii) above, then the Trustee or the holders of at least 25% in outstanding principal amount of the second ranking senior debt securities of that series may declare the second ranking senior debt securities of such series immediately due and payable whereupon the second ranking senior debt securities of such series shall, when permitted by applicable Spanish insolvency law, become immediately due and payable at their Early Termination Amount together with all interest (if any) accrued thereon.



Without prejudice to paragraphs (i) and (ii) above, the Trustee or the holders of at least 25% in outstanding principal amount of the second ranking senior debt securities of any series may at their discretion and without further notice, institute such proceedings against Banco Santander as they may think fit to enforce any obligation, condition or provision binding on Banco Santander under the second ranking senior debt securities of such series, provided that, except as provided in (ii) winding up above, Banco Santander shall not as a consequence of such proceedings be obliged to pay any sum or sums representing or measured by reference to principal or interest in respect of the second ranking senior debt securities of such series sooner than the same would otherwise have been payable by it or any damages.

Notwithstanding any contrary provisions, nothing shall impair the right of a holder, absent the holder's consent, to sue for any payments due but unpaid with respect to the second ranking senior debt securities of any series

### ***Subordinated Debt Security Event of Default***

Unless the relevant prospectus supplement provides otherwise, subject to the conditions described below, if any of the following events occurs and is continuing with respect to the subordinated debt securities of any series it shall constitute a "Subordinated Debt Security Event of Default":

- (i) *Non-payment*: default is made in the payment of any interest or principal due in respect of the subordinated debt securities of that series or any of them and such default continues for a period of seven days (or such other period as may be specified in the relevant prospectus supplement).
- (ii) *Winding up*: any order is made by any competent court or resolution passed for the winding up or dissolution of Banco Santander (except in any such case for the purpose of reconstruction or a merger or amalgamation which has been previously approved by the holders of at least a majority of the outstanding principal amount of the subordinated debt securities of that series or a merger with another institution in this case even without being approved by holders of the subordinated debt securities of such series, provided that any entity that survives or is created as a result of such merger is given a rating by an internationally recognized rating agency at least equal to the then current rating of Banco Santander at the time of such merger).

Under the terms of the subordinated debt securities indenture, no exercise of a resolution tool or resolution power by the Relevant Resolution Authority or any action in compliance therewith shall constitute a Subordinated Debt Security Event of Default.

If a Subordinated Debt Security Event of Default occurs as set forth in paragraph (i) above, then the Trustee or the holders of at least 25% in outstanding principal amount of the subordinated debt securities of that series may institute proceedings for the winding up or dissolution of Banco Santander but may take no further action in respect of such default.

If a Subordinated Debt Security Event of Default occurs as set forth in paragraph (ii) above, then the Trustee or the holders of at least 25% in outstanding principal amount of the subordinated debt securities of that series may declare the subordinated debt securities of such series immediately due and payable whereupon the subordinated debt securities of such series shall, when permitted by applicable Spanish insolvency law, become immediately due and payable at their Early Termination Amount together with all interest (if any) accrued thereon.

Without prejudice to paragraphs (i) and (ii) above, the Trustee or the holders of at least 25% in outstanding principal amount of the subordinated debt securities of any series may at their discretion and without further notice, institute such proceedings against Banco Santander as they may think fit to enforce any obligation, condition or provision binding on Banco Santander under the subordinated debt securities of such series, provided that, except as provided in (ii) winding up above, Banco Santander shall not as a consequence of such proceedings be obliged to pay any sum or sums representing or measured by reference to principal or interest in respect of the subordinated debt securities of such series sooner than the same would otherwise have been payable by it or any damages.

Notwithstanding any contrary provisions, nothing shall impair the right of a holder, absent the holder's consent, to sue for any payments due but unpaid with respect to the subordinated debt securities of any series.





***Events of Default and Defaults - General***

The Trustee may without prejudice to its rights in respect of any subsequent Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default from time to time and at any time waive any Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default or authorize any proposed Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default by Banco Santander, provided that in its opinion the interests of the holders shall not be materially prejudiced thereby and, provided, further, that the Trustee shall not exercise any powers conferred on it by this clause in contravention of any notice in writing to the Trustee made pursuant to the terms described under “—Limitations on Suits” above but no such notice shall affect any waiver or authorization previously given or made.

The holder or holders of not less than a majority in aggregate principal amount of the outstanding debt securities of any series may waive any past Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default, except an Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default in respect of the payment of interest, if any, or principal of (or premium, if any) or payments on, any debt security or a covenant or provision of the applicable indenture which cannot be modified or amended without the consent of each holder of debt securities of such series.

Subject to the provisions of the applicable indenture relating to the duties of the Trustee, if an Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default occurs and is continuing with respect to the debt securities of any series, the Trustee will be under no obligation to any holder or holders of the debt securities of the series, unless they have offered indemnity satisfactory to the Trustee in its sole discretion. Subject to the indenture provisions for the indemnification of the Trustee, the holder or holders of a majority in aggregate principal amount of the outstanding debt securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the series, if the direction is not in conflict with any rule of law or with the applicable indenture and the Trustee does not determine that the action would be unjustly prejudicial to the holder or holders of any debt securities of any series not taking part in that direction. The Trustee may take any other action that it deems proper which is not inconsistent with that direction.

The indentures provide that the Trustee will, within 90 days after the occurrence of an Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default with respect to the debt securities of any series, give to each holder of the debt securities of such series notice of the Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default of which the Trustee has received written notice, unless the Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default has been cured or waived. However, the Trustee shall be protected in withholding notice if it determines in good faith that withholding notice is in the interest of the holders.

Neither a cancellation of debt securities of any series, a reduction, in part or in full, of the principal amount of debt securities of any series or any accrued and unpaid interest on such debt securities, the conversion thereof into another security or obligation of Banco Santander or another person, in each case, as a result of the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to Banco Santander, nor the exercise of any Bail-in Power by the Relevant Resolution Authority with respect to such debt securities, will be an event of default or otherwise constitute non-performance of a contractual obligation, or entitle the holders of such securities to any remedies, which are hereby expressly waived.

***Substitution of Issuer***

Banco Santander may, without the consent of the holders of any of the debt securities of any series, consolidate or amalgamate with, merge into any other corporation or convey or transfer or lease Banco Santander’s properties and assets substantially as an entirety to any person, provided that (a) any successor corporation formed by any such consolidation, amalgamation or merger, or any transferee or lessee of such assets, is a company organized under the laws of any part of the European Union that assumes, by a supplemental indenture, Banco Santander’s obligations



on the debt securities of such series and under the applicable indenture, and such supplemental indenture is executed by Banco Santander and such successor entity, if applicable, and delivered to the Trustee, in form satisfactory to the Trustee; (b) immediately after giving effect to such consolidation, amalgamation, merger, conveyance or transfer, no Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default, as applicable and no event which, after notice or lapse of time or both, would become an Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default, as applicable, shall have occurred and be continuing; and (c) Banco Santander shall have delivered to the Trustee an officer's certificate and an opinion of counsel stating that such consolidation, amalgamation, merger, conveyance or transfer and such supplemental indenture, as the case may be, comply with the indenture and all conditions precedent have been complied with.

Any direct or indirect subsidiary of Banco Santander may assume the obligations of Banco Santander under any series of debt securities, subject to the prior consent of the European Central Bank, if required, with respect to any series of subordinated debt securities or debt securities, without the consent of the holders of any series of debt securities, provided that (a) the successor entity shall expressly assume such obligations by an amendment to the relevant indenture, executed by Banco Santander and such successor entity, if applicable, and delivered to the Trustee, in form satisfactory to the Trustee, and Banco Santander shall, by amendment to the relevant indenture, unconditionally guarantee all of the obligations of such successor entity under the debt securities of such series and the relevant indenture as so modified by such amendment; (b) immediately after giving effect to such assumption of obligations, no Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default, as applicable, and no event which, after notice or lapse of time or both, would become an Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default, as applicable, shall have occurred and be continuing; and (c) Banco Santander shall have delivered to the Trustee an officer's certificate and an opinion of counsel in such forms as are required in the relevant indenture.

In the event of any assumption, Additional Amounts under the debt securities of any series will be payable for taxes imposed by the jurisdiction of incorporation or tax residence of the assuming entity (subject to exceptions equivalent to those that apply to the obligation to pay Additional Amounts for taxes imposed by the laws of Spain) rather than taxes imposed by Spain. Additional Amounts for payments of interest or principal due prior to the date of the assumption will be payable only for taxes imposed by Spain. The assuming corporation will also be entitled to redeem the debt securities of any series in the circumstances described above under the section "*—Early Redemption for Taxation Reasons*" for any change or amendment to, or change in the application or official interpretation of, the laws or regulations of the assuming entity's jurisdiction of incorporation or tax residence, which change or amendment must, in the case of a substituted issuer, occur subsequent to the date of such assumption if the assuming entity is not incorporated or tax resident in Spain. Upon such assumption, Banco Santander will be released from all its obligations under the applicable debt securities and indentures other than in respect of the guarantee described above.

*An assumption of the obligations of Banco Santander under any series of debt securities might be considered for U.S. federal income tax purposes to be an exchange by the holders of the debt securities of such series for new debt securities, resulting in recognition of taxable gain or loss for these purposes and possible other adverse tax consequences for such holders. Holders should consult their tax advisors regarding the U.S. federal, state and local income tax consequences of an assumption.*

**Waiver of Right of Set-off**

Subject to applicable law, neither any holder or beneficial owner of the second ranking senior debt securities of any series, the subordinated debt securities of any series nor the Trustee acting on behalf of the holders of the second ranking senior debt securities of such series or the subordinated debt securities of such series, may exercise, claim or plead any right of set-off, compensation or retention in respect of any amount owed to it by Banco Santander in respect of, or arising under, or in connection with, the second ranking senior debt securities of such series or the second ranking senior debt securities indenture or the subordinated debt securities of such series or the subordinated debt securities indenture, as applicable, and each holder and beneficial owner of the second ranking senior debt securities of such series and the subordinated debt securities of such series, by virtue of its holding of any second ranking senior debt securities of such series or any interest therein or any subordinated debt securities of such series or any interest therein, as applicable, and the Trustee acting on behalf of such holders, shall be deemed to have waived all such rights of set-off, compensation or retention. If, notwithstanding the above, any amounts due and



payable to any holder or beneficial owner of a second ranking senior debt security of any series or any interest therein or to any holder or beneficial owner of a subordinated debt security of any series or any interest therein by Banco Santander in respect of, or arising under, the second ranking senior debt securities of such series or the subordinated debt securities of such series are discharged by set-off, such holder or beneficial owner shall, subject to applicable law, immediately pay an amount equal to the amount of such discharge to Banco Santander (or, if the event of any voluntary or involuntary liquidation of Banco Santander shall have occurred, the liquidator or administrator of Banco Santander, as the case may be) and, until such time as payment is made, shall hold an amount equal to such amount in trust (where possible) or otherwise for Banco Santander (or the liquidator or administrator of Banco Santander, as the case may be) and, accordingly, any such discharge shall be deemed not to have taken place.

**Substitution and Variation**

With respect to second ranking senior debt securities of any series, if a TLAC/MREL Disqualification Event, a tax event that would entitle Banco Santander to redeem the debt securities as set forth under “—Redemption and Repurchase—Early Redemption for Taxation Reasons” or Alignment Event occurs and is continuing, Banco Santander may substitute all (but not some) of the second ranking senior debt securities of any series or modify the terms of all (but not some) of the second ranking senior debt securities of such series, without any requirement for the consent or approval of the holders of the second ranking senior debt securities of such series, so that they are substituted for, or varied to, become, or remain, Qualifying Notes, subject to having given not less than 30 nor more than 60 days’ notice to the holders of the second ranking senior debt securities of such series in accordance with the terms described under “—Notices” and to the Trustee (which notice shall be irrevocable and shall specify the date for substitution or, as applicable, variation), and subject to obtaining Supervisory Permission therefor as required under Applicable TLAC/MREL Regulations, if required.

With respect to subordinated debt securities of any series, if a Capital Disqualification Event or a tax event that would entitle Banco Santander to redeem the debt securities as set forth under “—Redemption and Repurchase—Early Redemption for Taxation Reasons” occurs and is continuing, Banco Santander may substitute all (but not some) of the subordinated debt securities of any series or modify the terms of all (but not some) of the subordinated debt securities of such series, without any requirement for the consent or approval of the holders of the subordinated debt securities of such series, so that they are substituted for, or varied to, become, or remain, Qualifying Notes, subject to having given not less than 30 nor more than 60 days’ notice to the holders of the subordinated debt securities of such series in accordance with the terms described under “—Notices” and to the Trustee (which notice shall be irrevocable and shall specify the date for substitution or, as applicable, variation), and subject to obtaining Regulator consent, if required.

Any such notice shall specify the relevant details of the manner in which such substitution or variation shall take effect and where the holders of the second ranking senior debt securities of such series or subordinated debt securities of such series, as applicable, can inspect or obtain copies of the new terms and conditions of the second ranking senior debt securities of such series or subordinated debt securities of such series, as applicable. Such substitution or variation will be effected without any cost or charge to such holders.

The second ranking senior debt securities of any series and subordinated debt securities of any series, as applicable, shall cease to bear interest from (an including) the date of substitution thereof.

Any holder or beneficial owner of the second ranking senior debt securities of any series or subordinated debt securities of any series, as applicable, shall, by virtue of its acquisition of the second ranking senior debt securities of any series or any beneficial interest therein or the subordinated debt securities of any series or any beneficial interest therein, as applicable, be deemed to accept the substitution or variation of the terms of the second ranking senior debt securities of such series or subordinated debt security of such series, as applicable, and to grant to Banco Santander full power and authority to take any action and/or to execute and deliver any document in the name and/or on behalf of such holder which is necessary or convenient to complete the substitution or variation of the terms of the second ranking senior debt securities of such series or subordinated debt securities of such series, as applicable.

**Governing Law**

The debt securities and the indentures will be governed by and construed in accordance with the laws of the State of New York (without giving effect to the choice of law provisions), except that the authorization and



execution by Banco Santander of the indentures and the debt securities, certain provisions of the debt securities and the indentures related to the status of the debt securities shall be governed by and construed in accordance with Spanish law.

### **Agreement and Acknowledgement With Respect to the Exercise of the Bail-in Power**

Notwithstanding any other term of the debt securities of any series or any other agreements, arrangements, or understandings between Banco Santander and any holder of the debt securities of any series, by its acquisition of the debt securities of any series, each holder (which, for the purposes of this clause, includes each holder of a beneficial interest in the debt securities of any series) acknowledges, accepts, consents to and agrees to be bound by the exercise of any Bail-in Power (as defined herein) by the Relevant Resolution Authority that may result in the write-down or cancellation of all or a portion of the Amounts Due on the debt securities and/or the conversion of all or a portion of the Amounts Due on the debt securities into shares or other securities or other obligations of Banco Santander or another person, including by means of a variation to the terms of the debt securities to give effect to the exercise by the Relevant Resolution Authority of such Bail-in Power. Each holder of the debt securities further acknowledges and agrees that the rights of the holders of the debt securities are subject to—and will be varied, if necessary, so as to give effect to—the exercise of any Bail-in Power by the Relevant Resolution Authority.

For these purposes, the “Amounts Due” are the principal amount of, premium, if any, together with any accrued but unpaid interest, and Additional Amounts, if any, due on the debt securities of any series. References to such amounts will include amounts that have become due and payable, but which have not been paid, prior to the exercise of the Bail-in Power by the Relevant Resolution Authority.

For these purposes, a “Bail-in Power” means any statutory write-down and/or conversion power existing from time to time under any laws, regulations, rules or requirements in effect in the Kingdom of Spain relating to the resolution of Regulated Entities applicable to Banco Santander or other Regulated Entities of the Group, including (but not limited to) (i) the transposition of the BRRD (including but not limited to, Law 11/2015, Royal Decree 1012/2015 and any other implementing regulations) as amended or superseded from time to time, (ii) Regulation (EU) No. 806/2014 of the European Parliament and of 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 superseded from time to time, the “SRM Regulation”) and (iii) the instruments, rules and standards created thereunder, pursuant to which any obligation of a Regulated Entity (or an affiliate of such Regulated Entity) can be reduced, cancelled and/or converted into shares or other securities or obligations of such Regulated Entity (or affiliate of such Regulated Entity) or any other person.

“Regulated Entities” means any legal person to which BRRD, as implemented in the Kingdom of Spain (including but not limited to, Law 11/2015, Royal Decree 1012/2015 and any other implementing regulations) as amended or superseded from time to time, the SRM Regulation, or any other Spanish law relating to Bail-in Power, applies, which includes, certain credit entities, investment firms, and certain parent or holding companies.

Upon Banco Santander being informed or notified by the Relevant Resolution Authority of the actual exercise of the date from which the Bail-in Power is effective with respect to the debt securities, Banco Santander will provide a written notice to the holders of the debt securities of such series through DTC without delay regarding such exercise of Bail-in Power. Banco Santander will also deliver a copy of such notice to the Trustee for information purposes. Any delay or failure by Banco Santander to give notice shall not affect the validity and enforceability of the Bail-in Power nor the effects on the debt securities described in this clause.

The exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the debt securities shall not constitute an Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default and the terms and conditions of the debt securities shall continue to apply in relation to the residual principal amount of, or outstanding amount payable with respect to, the debt securities subject to any modification of the amount of distributions payable to reflect the reduction of the principal amount, and any further modification of the terms that the Relevant Resolution Authority may decide in accordance with applicable laws and regulations relating to the resolution of credit institutions, investment firms and/or Group entities incorporated in the relevant Member State.



No repayment or payment of Amounts Due, if any, on the debt securities of any series, will become due and payable or be paid after the exercise of any Bail-in Power by the Relevant Resolution Authority if and to the extent such amounts have been reduced, converted, cancelled, amended or altered as a result of such exercise.

By its acquisition of the debt securities of any series, each holder of the debt securities of such series, (which, for the purposes of this clause, includes each holder of a beneficial interest in the debt securities of such series), to the extent permitted by the Trust Indenture Act of 1939 (“Trust Indenture Act”), will waive any and all claims, in law and/or in equity, against the Trustee for, agree not to initiate a suit against the Trustee in respect of, and agree that the Trustee will not be liable for, any action that the Trustee takes, or abstains from taking, in either case in accordance with the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the debt securities of such series.

Additionally, by its acquisition of the debt securities of any series, each holder of the debt securities of such series acknowledges and agrees that, upon the exercise of the Bail-in Power by the Relevant Resolution Authority:

(i) the Trustee will not be required to take any further directions from the holders of the debt securities of such series with respect to any portion of the debt securities of such series that are written-down, converted to equity and/or cancelled under the relevant indenture, which authorizes holders of a majority in aggregate outstanding principal amount of the debt securities of such series to direct certain actions relating to the debt securities of such series; and

(ii) the relevant indenture will not impose any duties upon the Trustee whatsoever with respect to the exercise of the Bail-in Power by the Relevant Resolution Authority;

*provided, however*, that notwithstanding the exercise of the Bail-in Power by the Relevant Resolution Authority, so long as the debt securities of any series remain outstanding, there will at all times be a Trustee for the debt securities of such series in accordance with the relevant indenture, and the resignation and/or removal of the Trustee and the appointment of a successor Trustee will continue to be governed by the relevant indenture, including to the extent no additional supplemental indenture or amendment is agreed upon in the event the debt securities of such series remain outstanding following the completion of the exercise of the Bail-in Power.

By its acquisition of the debt securities of any series, each holder of the debt securities of such series acknowledges and agrees that neither a cancellation or deemed cancellation of the principal or interest (in each case, in whole or in part), nor the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the debt securities of such series will give rise to a default for purposes of Section 315(b) (Notice of Default) and Section 315(c) (Duties of the Trustee in Case of Default) of the Trust Indenture Act.

By purchasing the debt securities of any series, each holder (including each beneficial owner) of the debt securities of such series shall be deemed to have authorized, directed and requested DTC and any direct participant in DTC or other intermediary through which it holds the debt securities of such series to take any and all necessary action, if required, to implement the exercise of the Bail-in Power with respect to the debt securities of such series as it may be imposed, without any further action or direction on the part of such holder.

Each holder of the debt securities also acknowledges and agrees that the foregoing description of the Bail-in Power and its exercise is exhaustive on the matters described herein to the exclusion of any other agreements, arrangements or understandings relating to the application of any Bail-in Power to the debt securities.

**Discharge, Defeasance and Covenant Defeasance**

Banco Santander may discharge certain obligations to holders of any series of debt securities that have not already been delivered to the applicable trustee for cancellation and that have become due and payable, will become due and payable at their stated maturity within one year or, if redeemable at the option of Banco Santander, are called for redemption within one year, by depositing or causing to be deposited with the applicable trustee, in trust, funds in an amount sufficient, without reinvestment, in the opinion of an internationally recognized firm of independent public accountants, to pay and discharge the entire indebtedness on the debt securities of such series, including principal, interest, premium and any additional amounts to the date of such deposit (if the debt securities of such series have become due and payable) or to the maturity date of the debt securities of such series, as the case may be.



Banco Santander may also elect to have its obligations under the relevant indenture discharged with respect to the outstanding debt securities of any series (“legal defeasance”). Legal defeasance means that Banco Santander will be deemed to have paid and discharged the entire indebtedness represented by the outstanding debt securities of such series under the relevant indenture, except for:

- the rights of holders of the outstanding debt securities of the relevant series to receive principal, interest, any premium and any additional amounts when due from the trust described below;
- the obligations of Banco Santander to issue temporary debt securities, register the transfer of debt securities, replace temporary or mutilated, destroyed, lost or stolen debt securities, pay additional amounts, maintain an office or agency for payment and hold money for payments in trust;
- the rights, powers, trusts, duties and immunities of the applicable trustee; and
- the defeasance provisions of the applicable indenture.

In addition, Banco Santander may elect to have its obligations released with respect only to certain covenants in the relevant indentures (“covenant defeasance”). Any omission to comply with any obligations so released will not constitute a default or an Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default, as applicable, with respect to the debt securities of any series.

In order to exercise either legal defeasance or covenant defeasance with respect to outstanding debt securities of or within any series:

- Banco Santander must irrevocably have deposited or caused to be deposited with the applicable trustee, in trust, money, in U.S. dollars or in the foreign currency in which the debt securities of such series are payable at stated maturity, or U.S. government obligations or a combination of money and U.S. government obligations applicable to the debt securities of such series which through the scheduled payment of principal and interest in accordance with their terms will provide money in an amount sufficient, without reinvestment, in the opinion of an internationally recognized firm of independent public accountants expressed in written certification thereof delivered to the Trustee, to pay and discharge when due all of the principal, interest and any premium of the debt securities of such series and any mandatory sinking fund or analogous payments thereon;
- the legal defeasance or covenant defeasance must not result in a breach or violation of, or constitute a default under, the relevant indenture or any other material agreement or instrument to which Banco Santander is a party or by which it is bound;
- no Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default, as applicable, or event which, with notice or lapse of time, or both, would become an Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default, as applicable with respect to the outstanding debt securities of such series may have occurred and be continuing on the date of the establishment of such a trust, and in the case of legal defeasance, at any time during the period ending on the 91st day after such date;
- Banco Santander must have delivered to the applicable trustee an opinion of counsel of recognized standing to the effect that the beneficial owners of the debt securities of such series will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the legal defeasance or covenant defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if the legal defeasance or covenant defeasance had not occurred. In the case of legal defeasance of debt securities only, the opinion of counsel must refer to and be based upon a letter ruling of the Internal Revenue Service received by Banco Santander, a revenue ruling published by the Internal Revenue Service or a change in applicable U.S. federal income tax law occurring after the date of the relevant indenture;



- the legal defeasance or covenant defeasance must not cause the applicable trustee to have a conflicting interest within the meaning of the Trust Indenture Act (assuming all relevant debt securities are in default within the meaning of such Act);
- the legal defeasance or covenant defeasance must not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended, unless such trust shall be registered under such Act or exempt from registration thereunder; and
- in the case of the subordinated debt securities of any series, Banco Santander shall have delivered to the applicable trustee an opinion of counsel substantially to the effect that (i) the trust funds deposited to effect the legal defeasance or covenant defeasance will not be subject to any rights of holders of senior indebtedness, including those arising under the applicable subordination provisions of the subordinated indenture, and (ii) after the second anniversary following the deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, except that if a court were to rule under any such law in any case or proceeding that the trust funds remained property of Banco Santander, no opinion is given as to the effect of such laws on the trust funds except in certain limited circumstances set forth in the subordinated indenture.

Unless otherwise provided in the relevant prospectus supplement, if, after Banco Santander has deposited funds or U.S. government obligations to effect legal defeasance or covenant defeasance with respect to the debt securities of any series,

- the holder of a debt security of such series is entitled to elect and does elect to receive payment in a currency other than that in which such deposit has been made in respect of such note; or
- a "conversion event" (as defined below) occurs in respect of the foreign currency in which such deposit has been made; then,

the indebtedness represented by the debt securities of such series shall be deemed to have been and will be fully discharged and satisfied through the payment of the principal or interest, premium, and any additional amounts on the debt securities of such series as they becomes due out of the proceeds yielded by converting the amount or other property so deposited into the currency in which the debt securities of such series become payable as a result of such election or such conversion event based on the applicable market exchange rate for such currency in effect on the second business day prior to such payment date, except, with respect to a conversion event, for such foreign currency in effect at the time of the conversion event.

A "conversion event" means the cessation of use of (i) a foreign currency both by the government of the country which issued such currency and for the settlement of transactions by a central bank or other public institutions of or within the international banking community, or (ii) the euro both within the European monetary system and for the settlement of transactions by public institutions of or within the EU.

In the event Banco Santander effects covenant defeasance with respect to any series of debt securities and the debt securities of such series are declared due and payable because of the occurrence of any Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default, as applicable, the amount in money and U.S. government obligations deposited in trust will be sufficient to pay amounts due on the debt securities of such series at the time of their stated maturity. They may not, however, be sufficient to pay amounts due on the debt securities of such series at the time of the acceleration resulting from such Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default, as applicable. In this case, Banco Santander will remain liable to make payment of such amounts due at the time of acceleration.

The relevant prospectus supplement may further describe the provisions permitting legal defeasance or covenant defeasance, including any modifications to the provisions described above, with respect to the debt securities of a particular series.

Upon the exercise of the Bail-in Power with respect to a series of debt securities which results in the cancellation, or the conversion into other securities, of all the principal amount of, and interest on the debt securities of such series or the debt securities of such series otherwise ceasing to be outstanding, the relevant indenture shall be satisfied and discharged as to such series.



**Limitation on Suits**

No holder of debt securities will be entitled to proceed directly against Banco Santander, except as described below.

Subject to any further limitations provided in the relevant prospectus supplement and supplemental indenture establishing any series of debt securities, before a holder of the debt securities may bypass the Trustee and bring its own lawsuit or other formal legal action or take other steps to enforce its rights or protect its interests relating to the debt securities, the following must occur:

- The holder must have given the Trustee written notice that a continuing Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default, as applicable has occurred and remains uncured.
- The holders of not less than 25% in outstanding aggregate principal amount of the debt securities of the relevant series must make a written request that the Trustee institute proceedings because of the Ordinary Senior Debt Security Event of Default, Second Ranking Senior Debt Security Event of Default or Subordinated Debt Security Event of Default, as applicable, and the holder must offer indemnity satisfactory to the Trustee in its sole discretion against the cost and other liabilities incurred in connection with such request.
- The Trustee must not have taken action for 60 days after receipt of the above notice and offer of security or indemnity, and the Trustee must not have received an inconsistent direction from the majority in principal amount of all outstanding debt securities of the relevant series during that period.

Notwithstanding any other provision of the debt securities indenture or the relevant debt securities, the right of any holder of debt securities to receive payment of the principal amount of and interest on, the debt securities, on or after the due dates thereof or to institute suit for the enforcement of any such payment on or after such respective dates, will not be impaired or affected without the consent of such holder.

**Notices**

All notices to holders of registered debt securities shall be validly given if in writing and mailed, first-class postage prepaid, to them at their respective addresses in the register maintained by the Trustee.

If and for so long as the debt securities of the relevant series are admitted to trading on a stock exchange, notices will also be given in accordance with any applicable requirements of such stock exchange.

**No Obligations to Beneficial Owners**

None of Banco Santander, the Trustee, the paying agent or the debt security registrar shall have any responsibility or obligation to any beneficial owner in a global security, an agent member or other person with respect to the accuracy of the records of the depository or its nominee or of any agent member, with respect to any ownership interest in the debt securities or with respect to the delivery to any agent member, beneficial owner or other person (other than the depository) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such debt securities. All notices and communications to be given to the holders and all payments to be made to holders under the debt securities and the respective indenture shall be given or made only to or upon the order of the registered holders (which shall be the depository or its nominee in the case of the global security). The rights of beneficial owners in the global security shall be exercised only through the depository subject to the applicable procedures. Banco Santander, the Trustee, the paying agent and the debt security registrar shall be entitled to rely and shall be fully protected in relying upon information furnished by the depository with respect to its members, participants and any beneficial owners. Banco Santander, the Trustee, the paying agent and the debt security registrar shall be entitled to deal with the depository, and any nominee thereof, that is the registered holder of any global security for all purposes of the indenture relating to such global security (including the payment of principal, premium, if any, and interest and additional amounts, if any, and the giving of instructions or directions by or to the owner or holder of a beneficial ownership interest in such global security) as the sole holder of such





global security and shall have no obligations to the beneficial owners thereof. None of Banco Santander, the Trustee, the paying agent or the debt security registrar shall have any responsibility or liability for any acts or omissions of the depository with respect to such global security, for the records of any such depository, including records in respect of beneficial ownership interests in respect of any such global security, for any transactions between the depository and any agent member or between or among the depository, any such agent member and/or any holder or owner of a beneficial interest in such global security, or for any transfers of beneficial interests in any such global security.

Notwithstanding the foregoing, with respect to any global security, nothing herein shall prevent Banco Santander, the Trustee, or any agent of Banco Santander or the Trustee from giving effect to any written certification, proxy or other authorization furnished by any depository (or its nominee), as a holder, with respect to such global security or shall impair, as between such depository and owners of beneficial interests in such global security, the operation of customary practices governing the exercise of the rights of such depository (or its nominee) as holder of such global security.

**Subsequent Holders' Agreement**

Holders and beneficial owners of the debt securities of any series or beneficial interests therein that acquire the debt securities of such series in the secondary market shall be deemed to acknowledge, agree to be bound by and consent to the same provisions specified herein to the same extent as the holders and beneficial owners of the debt securities of such series that acquire the debt securities of such series upon their initial issuance, including, without limitation, with respect to the acknowledgment and agreement to be bound by and consent to the terms of the debt securities of such series, including in relation to the Bail-in Power.

**The Trustee**

The Bank of New York Mellon acting through its London Branch, is the Trustee under the indentures with respect to the debt securities. The Trustee shall have and be subject to all the duties and responsibilities specified with respect to an indenture Trustee under the Trust Indenture Act. Subject to the provisions of the relevant indentures and the Trust Indenture Act, the Trustee is under no obligation to exercise any of the powers vested in it by the indentures at the request of any holder of debt securities, unless offered indemnity satisfactory to the Trustee in its sole discretion by the holder against the costs, expense and liabilities which might be incurred thereby. Banco Santander and certain of its subsidiaries maintain deposit accounts and conduct other banking transactions with The Bank of New York Mellon in the ordinary course of their business. The Bank of New York Mellon is also the book-entry depository and Principal Paying Agent with respect to Banco Santander's debt securities.



## DESCRIPTION OF CONTINGENT CONVERTIBLE CAPITAL SECURITIES

*The following is a summary of the general terms that will apply to any contingent convertible capital securities that may be offered by Banco Santander.*

*Each time that Banco Santander issues contingent convertible capital securities, it will file a prospectus supplement and/or free writing prospectus with the SEC, which investors should read carefully. The prospectus supplement and/or free writing prospectus will summarize specific financial terms of your security and may contain additional or different terms of those contingent convertible capital securities to those described in this prospectus. All references in this prospectus to a prospectus supplement in respect of any series of securities include references to a free writing prospectus if a free writing prospectus is filed to set forth any terms of such series. The terms presented here, together with the terms contained in the prospectus supplement, will be a description of the material terms of the contingent convertible capital securities, but if there is any inconsistency between the terms presented here and those in the prospectus supplement, those in the prospectus supplement will apply and will replace those presented here. Therefore, the statements made below in this section may not apply to each investor's contingent convertible capital security. Contingent convertible capital securities will be issued by Banco Santander under a contingent convertible capital securities indenture. The contingent convertible capital securities indenture is a contract between Banco Santander, as issuer, and The Bank of New York Mellon, as Trustee. The contingent convertible capital securities indenture does not limit Banco Santander's ability to incur additional indebtedness, including the issuance of further contingent convertible capital securities. Investors should also read the contingent convertible capital securities indenture and any related supplemental indenture establishing such contingent convertible capital securities, which have been filed with the SEC as an exhibit to the registration statement of which this prospectus is a part.*

### General

The contingent convertible capital securities are Banco Santander's perpetual subordinated convertible debt securities mandatorily convertible into Banco Santander's ordinary shares only upon the occurrence of certain events. The contingent convertible capital securities are not deposits and are not insured or guaranteed by the U.S. Federal Deposit Insurance Corporation or any other government agency of the United States or the Kingdom of Spain.

Banco Santander may issue contingent convertible capital securities in one or more series. The relevant prospectus supplement for any particular series of contingent convertible capital securities will describe the terms of the offered contingent convertible capital securities, including, but not limited to, some or all of the following terms, to the extent such terms differ from or are in addition to those set forth in this prospectus:

- the specific designation and Liquidation Preference of the contingent convertible capital securities;
- how to calculate Distributions;
- the date or dates from which Distributions, if any, will accrue or the method, if any, by which such date or dates will be determined;
- the price or prices at which they will be issued;
- the terms on which the contingent convertible capital securities may or are required to convert into ordinary shares of Banco Santander and any specific terms relating to the conversion or exchange feature, including upon the occurrence of certain events relating to our financial condition;
- whether payments are subject to certain conditions that relate to our financial condition, including our capital ratios;
- the times and places at which any Distributions are payable;
- the terms and conditions of any mandatory redemption;
- the terms and conditions, if any, under which Banco Santander may elect to substitute or vary the terms of the contingent convertible capital securities;



- the currency or currencies in which Liquidation Preference and Distributions are denominated and in which Banco Santander will make any payments;
- any index used to determine the amount of any payments on the contingent convertible capital securities;
- any restrictions that apply to the offer, sale and delivery of the contingent convertible capital securities;
- whether and under what circumstances, if other than those described in this prospectus, Banco Santander will pay additional amounts on the contingent convertible capital securities following certain developments with respect to withholding tax or information reporting laws and whether, and on what terms, if other than those described in this prospectus, Banco Santander may redeem the contingent convertible capital securities following those developments;
- the clearing system or systems on which the contingent convertible capital securities will be cleared and settled; and
- any listing on a securities exchange.

Holders of contingent convertible capital securities shall have no voting rights except those described under the heading “—*Modification and Waiver*” below, unless and until such contingent convertible capital securities are converted into Banco Santander’s ordinary shares, in which case holders will have the voting rights described under “Description of Ordinary Shares”.

### Certain Defined Terms

In this “Description of Contingent Convertible Capital Securities” the following terms have the following meanings:

“Accounting Currency” means EUR or such other primary currency used in the presentation of the Group’s accounts from time to time;

“Additional Tier 1 Instrument” means any contractually subordinated obligation (*crédito subordinado*) of Banco Santander according to Article 92.2° of the Spanish Insolvency Law, ranking as an additional tier 1 instrument (*instrumentos de capital adicional de nivel 1*) under Additional Provision 14.2°. (c) of Law 11/2015;

“ADS Depositary” means The Bank of New York Mellon, as the depositary under Banco Santander’s ordinary share American Depositary Facility or any successor ADS depositary;

“Agents” means the agents appointed in accordance with the contingent convertible capital securities indenture or applicable supplemental indenture;

“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 Banco Santander and/or the Group including, without limitation to the generality of the foregoing, those regulations, requirements, guidelines and policies relating to capital adequacy, resolution and/or solvency then in effect of the Regulator (whether or not such requirements, guidelines or policies have the force of law and whether or not they are applied generally or specifically to Banco Santander and/or the Group);

“Available Distributable Items” means, in respect of the payment of a Distribution at any time, those profits and reserves (if any) of Banco Santander which are available, in accordance with Applicable Banking Regulations for the payment of such Distribution.

As at the date of this registration statement, Article 4(1)(128) of the CRR provides as follows:

“Distributable Items” means 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 less any losses brought forward, profits which are non-distributable pursuant to provisions in legislation or the institution’s bylaws and sums placed to non-distributable reserves in accordance with applicable national law or the statutes of the institution, those losses and reserves being determined on the basis of the individual accounts of the institution and not on the basis of the consolidated accounts.



“Business Day” means any day, other than Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions are authorized or required by law, regulation or executive order to close in the City of New York, London, Madrid or any other place or places where the Liquidation Preference of, or any Distributions on, or any Additional Amounts with respect to the contingent convertible capital securities of that series are payable.

“Calculation Agent” means the Trustee or such other person authorized by Banco Santander as the party responsible for calculating the Distributions and/or such other amount(s) from time to time in relation to any series of contingent convertible capital securities.

“Capital Event” means a change in Spanish law, Applicable Banking Regulations or any change in the application or official interpretation thereof that Banco Santander determines results or is likely to result in the entire outstanding aggregate Liquidation Preference of the contingent convertible capital securities of the relevant series ceasing to be included in, or counting towards, the Group’s or Banco Santander’s Tier 1 Capital;

“Cash Dividend” means (i) any Dividend which is to be paid or made in cash (in whatever currency), but other than falling within paragraph (b) of the definition of “Spin-Off” and (ii) any Dividend determined to be a Cash Dividend pursuant to paragraph (a) of the definition of “Dividend”, but a Dividend falling within paragraph (c) or (d) of the definition of “Dividend” shall be treated as being a Non-Cash Dividend;

“CET1 Capital” means at any time, the Common Equity Tier 1 Capital of Banco Santander or the Group, respectively, as calculated in accordance with Chapter 2 (Common Equity Tier 1 Capital) of Title I (Elements of own funds) of Part Two (Own Funds) of the CRR and/or Applicable Banking Regulations at such time, including any applicable transitional, phasing in or similar provisions;

“CET1 ratio” means, at any time, with respect to Banco Santander 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 Banco Santander or the Group, respectively, at such time divided by the Risk Weighted Assets Amount of Banco Santander or the Group, respectively, at such time;

“Clearing System” means DTC or any of the European Clearing Systems, as applicable;

“Clearing System Contingent Convertible Capital Securities” means, for so long as any contingent convertible capital securities of a series is represented by a global contingent convertible capital security held by or on behalf of a Clearing System, any particular Liquidation Preference of such series of the contingent convertible capital securities shown in the records of a Clearing System as being held by a holder of the contingent convertible capital securities of such series;

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

“Common Shares” means ordinary shares in the capital of Banco Santander, each of which confers on the holder one vote at general meetings of Banco Santander and is credited as fully paid up;

“Conversion Price” means, in respect of the Trigger Event Notice Date, if the Common Shares are:

- (a) then admitted to trading on a Relevant Stock Exchange, the higher of:
  - (i) the Current Market Price of a Common Share, translated into U.S. dollars at the Prevailing Rate;
  - (ii) the Floor Price; and
  - (iii) the nominal value of a Common Share, in each case on the Trigger Event Notice Date, translated into U.S. dollars at the Prevailing Rate; or
- (b) not then admitted to trading on a Relevant Stock Exchange, the higher of (ii) and (iii) above;



For the avoidance of doubt, the translation into U.S. dollars at the Prevailing Rate described above shall in no circumstances imply that any Common Share will be issued at a price of less than its nominal value expressed in the Share Currency.

“Conversion Settlement Date” means the date on which the relevant Common Shares are to be delivered following 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 may require) the Trigger Event Notice Date and notice of the expected Conversion Settlement Date and of the Conversion Price shall be given to holders of contingent convertible capital securities in accordance with “—Notices” below not more than 10 Business Days following the Trigger Event Notice Date;

“Conversion Shares” means the number of Common Shares to be issued on Trigger Conversion in respect of each contingent convertible capital security of any series to be converted;

“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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC or such other directive as may come into effect in place thereof;

“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 Regulator, the European Banking Authority or any other relevant authority, which are applicable to Banco Santander (on a standalone basis) or the Group (on a consolidated basis);

“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 and amending Regulation (EU) No. 648/2012 or such other regulation as may come into effect in place thereof;

“Current Market Price” means, in respect of a Common Share at a particular date, the average of the daily Volume Weighted Average Price of a Common Share on each of the 5 consecutive dealing days ending on the dealing day immediately preceding such date (the “Relevant Period”) (rounded if necessary to the nearest cent with 0.5 cents being rounded upwards); provided that 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 Common 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 Common Shares shall have been based on a price cum-Dividend (or cum-any other entitlement) shall for the purposes of this definition be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Dividend or entitlement per Common Share as at the date of the first public announcement relating to such Dividend or entitlement; or
- (b) if the Common 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 Common Shares shall have been based on a price ex-Dividend (or ex-any other entitlement) shall for the purposes of this definition be deemed to be the amount thereof increased by an amount equal to the Fair Market Value of any such Dividend or entitlement per Common Share as at the date of the first public announcement relating to such Dividend or entitlement,

and provided further that:

- (i) 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 Common 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 Common Share as at the date of first public announcement relating to such Dividend or entitlement; and

- (ii) if the Volume Weighted Average Price of a Common 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 the Current Market Price shall be determined in good faith by an Independent Financial Adviser;

In making any calculation or determination of Current Market Price, such adjustments (if any) shall be made as an Independent Financial Adviser determines in good faith appropriate to reflect any consolidation or sub-division of the Common Shares or any issue of Common Shares by way of capitalization of profits or reserves, or any like or similar event.

“dealing day” means a day on which the Relevant Stock Exchange or relevant stock exchange or securities market is open for business and on which Common Shares, Securities, Spin-Off Securities, options, warrants or other rights (as the case may be) may be dealt in (other than a day on which the Relevant Stock Exchange or relevant stock exchange or securities market is scheduled to or does close prior to its regular weekday closing time);

“Delivery Notice” means a notice in the form for the time being currently available from the specified office of any Paying and Conversion Agent or in such form as may be acceptable to DTC from time to time, which contains the relevant account and related details for the delivery of any ADSs or Common Shares and all relevant certifications and/or representations as may be required by applicable law and regulations (or is deemed to constitute the confirmation thereof), and which are required to be delivered in connection with a conversion of the contingent convertible capital securities and the delivery of the ADSs or Common Shares;

“Distribution” means the non-cumulative cash distribution in respect of the contingent convertible capital securities and a Distribution Period determined in accordance with “—*Distributions*” below;

“Distribution Payment Date” shall have the meaning as determined in the relevant prospectus supplement;

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

“Distribution Rate” means the rate at which the contingent convertible capital securities accrue Distributions in accordance with “—*Distributions*” below;

“Dividend” means any dividend or distribution to Shareholders in respect of the Common 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 Common Shares or other Securities credited as fully or partly paid up by way of capitalization of profits or reserves), and however described and whether payable out of 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) a Dividend in cash is announced which is to be, or may at the election of a Shareholder or Shareholders be, satisfied by the issue or delivery of Common Shares or other property or assets, or where a capitalization of profits or reserves is announced which is to be, or may at the election of a Shareholder or Shareholders be, satisfied by the payment of cash, then the Dividend 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 and (B) the Current Market Price of such Common Shares as at the first date on which the Common Shares are traded ex-the relevant Dividend on the Relevant Stock Exchange or, as the case may be, the record date or other due date for establishment of entitlement in respect of the relevant



200FX&amp;=&amp;eN3kzyssb

capitalization or, as the case may be, the Fair Market Value of such other property or assets as at the date of the first public announcement of such Dividend or capitalization or, in any such case, if later, the date on which the number of Common Shares (or amount of such other property or assets, as the case may be) which may be issued and delivered is determined; or

- (ii) there shall be any issue of Common Shares by way of capitalization 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 would otherwise be payable to Shareholders, whether at their election or otherwise), the Dividend in question shall be treated as a Cash Dividend of an amount equal to the Current Market Price of such Common Shares as at the first date on which the Common Shares are traded ex-the relevant Dividend on the Relevant Stock Exchange or, as the case may be, the record date or other due date for establishment of entitlement in respect of the relevant capitalization or, in any such case, if later, the date on which the number of Common Shares to be issued and delivered is determined;
- (b) any issue of Common Shares falling within subparagraphs (a) and (b) of “—*Conversion Upon Trigger Event—Conversion Price—Anti-Dilution Adjustment of the Floor Price*” below shall be disregarded;
- (c) a purchase or redemption or buy back of share capital of Banco Santander by or on behalf of Banco Santander 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 Act 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 Banco Santander by or on behalf of Banco Santander or any member of the Group shall not constitute a Dividend unless, in the case of a purchase or redemption or buy back of Common Shares by or on behalf of Banco Santander or any member of the Group, the weighted average price per Common 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 percent. the average of the daily Volume Weighted Average Price of a Common Share on the 5 dealing days immediately preceding 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 Common Shares at some future date at a specified price or where a tender offer is made, on the 5 dealing days immediately preceding 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 Common Share, a minimum price per Common 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 Common Shares purchased, redeemed or bought back by Banco Santander 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 (i) 105 percent. of the daily Volume Weighted Average Price of a Common Share determined as aforesaid and (ii) the number of Common Shares so purchased, redeemed or bought back;
- (d) if Banco Santander or any member of the Group shall purchase, redeem or buy back any depositary or other receipts or certificates representing Common 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 Banco Santander for the purpose of enabling Shareholders to elect, or which may require Shareholders, to receive dividends or distributions in respect of the Common Shares held by them



from a person other than (or in addition to) Banco Santander, such dividend or distribution shall for the purposes of these contingent convertible capital securities of any series be treated as a dividend or distribution made or paid to Shareholders by Banco Santander, and the provisions of the contingent convertible capital securities and the contingent convertible capital securities indenture, including references to Banco Santander paying or making a dividend, shall be construed accordingly;

“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”, “€” and “euro” 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;

“European Clearing System” means Euroclear Bank S.A./N.V. (“Euroclear Bank”), as operator of the Euroclear System (“Euroclear”) and/or Clearstream Banking, *société anonyme* (“Clearstream Luxembourg”);

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

“Fair Market Value” means, with respect to any property on any date, the fair market value of that property as determined by an Independent Financial Adviser in good faith provided that (a) the Fair Market Value of a Cash Dividend shall be the amount of such Cash Dividend; (b) the Fair Market Value of any other cash amount shall be the amount of such cash; (c) where Securities, Spin-Off Securities, options, warrants or other rights are publicly traded on a stock exchange or securities market of adequate liquidity (as determined by an Independent Financial Adviser in good faith), the Fair Market Value (i) of such Securities or Spin-Off Securities shall equal the arithmetic mean of the daily Volume Weighted Average Prices of such Securities or Spin-Off Securities and (ii) of such options, warrants or other rights shall equal the arithmetic mean of the daily closing prices of such options, warrants or other rights, in the case of both (i) and (ii) above during the period of 5 dealing days on the relevant stock exchange or securities market commencing on such date (or, if later, the first such dealing day such Securities, Spin-Off Securities, options, warrants or other rights are publicly traded) or such shorter period as such Securities, Spin-Off Securities, options, warrants or other rights are publicly traded; and (d) where Securities, Spin-Off Securities, options, warrants or other rights are not publicly traded on a stock exchange or securities market of adequate liquidity (as aforesaid), the Fair Market Value of such Securities, Spin-Off Securities, options, warrants or other rights shall be determined by an Independent Financial Adviser in good faith, on the basis of a commonly accepted market valuation method and taking account of such factors as it considers appropriate, including the market price per Common Share, the dividend yield of a Common 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;

“Floor Price” means the price per Common Share determined in the relevant prospectus supplement, subject to adjustment in accordance with “—*Anti-Dilution Adjustment of the Floor Price*” below;

“Further Contingent Convertible Capital Securities” means any securities which are contingently convertible into Common Shares of Banco Santander pursuant to their terms in the event that the CET1 ratio of Banco Santander or the Group is less than a specified percentage;

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

“Independent Financial Adviser” means an independent financial institution of international repute appointed by Banco Santander at its own expense;

“Initial Margin” means the percent per annum determined in the relevant prospectus supplement;





“Law 11/2015” means Law 11/2015 of 18 June, on recovery and resolution of credit entities 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 from time to time;

“Liquidation Distribution” means the Liquidation Preference per contingent convertible capital security plus, if applicable, where not cancelled pursuant to, or otherwise subject to the limitations on payment set out in, “—Distributions”, 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” shall have the meaning set forth in the relevant prospectus supplement;

“Maximum Distributable Amount” means any maximum distributable amount required to be calculated in accordance with Article 48 of Law 10/2014 and Articles 73 and 74 of Royal Decree 84/2015, each interpreted in light of Article 141 of the CRD IV Directive;

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

- (a) only ordinary shares of Newco or depositary or other receipts or certificates representing ordinary shares of Newco are issued to Existing Shareholders;
- (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 proportions as their respective holdings of such Voting Rights immediately prior to the Scheme of Arrangement;
- (c) immediately after completion of the Scheme of Arrangement, Newco is (or one or more wholly-owned Subsidiaries of Newco are) the only ordinary shareholder (or shareholders) of Banco Santander;
- (d) all Subsidiaries of Banco Santander immediately prior to the Scheme of Arrangement (other than Newco, if Newco is then a Subsidiary) are Subsidiaries of Banco Santander (or of Newco) immediately after completion of the Scheme of Arrangement; and
- (e) immediately after completion of the Scheme of Arrangement, Banco Santander (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 Banco Santander 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;

“Parity Securities” means any preferred securities (*participaciones preferentes*) issued under Law 13/1985 and/or Royal Decree – Law 14/2013 of 29 November (“RD-L 14/2013”) and/or Law 10/2014 and/or under the CRR from time to time by Banco Santander or by any Subsidiary and which are guaranteed by Banco Santander or any preferential participations, preferential shares or preference shares (*acciones preferentes*) ranking *pari passu* with any preferred securities (*participaciones preferentes*) issued from time to time by Banco Santander or by any Subsidiary and which are guaranteed by Banco Santander or any other instrument issued or guaranteed by Banco Santander ranking *pari passu* with the contingent convertible capital securities;

“Paying and Conversion Agent” means the Principal Paying Agent and any other paying and conversion agent appointed in accordance with the contingent convertible capital securities indenture or any supplemental indenture and includes any successors thereto appointed from time to time in accordance with the contingent convertible capital securities indenture or any supplemental indenture;

“Payment Business Day” means (i) 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 New York City and London and (ii) in the case of contingent convertible capital securities in definitive form only, 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 the relevant place of presentation;



200FX&amp;=&amp;eN31XgZLA

“Prevailing Rate” means, in respect of any currencies on any day, the spot rate of exchange between the relevant currencies prevailing as at 12 noon (London time) on that date as appearing on or derived from Reuters page ECB37 or, if not available, from any other Reference Page or, if such a rate cannot be determined at such time, the rate prevailing as at 12 noon (London time) on the immediately preceding day on which such rate can be so determined or, if such rate cannot be so determined by reference to the Reference Page, the rate determined in such other manner as an Independent Financial Adviser in good faith shall prescribe;

“Principal Paying Agent” means any Person (which may include Banco Santander) authorized by Banco Santander to pay the Liquidation Preference of, or Distributions on, or any Additional Amounts with respect to, the contingent convertible capital securities of any series on behalf of Banco Santander. Unless otherwise specified in the applicable prospectus supplement, The Bank of New York Mellon, acting through its London Branch will act as Principal Paying Agent in respect of the contingent convertible capital securities of any series;

“Qualifying Notes” means, with respect to each series of contingent convertible capital securities, at any time, any securities issued directly by Banco Santander that have terms not otherwise materially less favorable to the holders of the contingent convertible capital securities of such series than the terms of the contingent convertible capital securities of such series, provided that Banco Santander shall have delivered a certificate signed by two directors of Banco Santander to that effect to the Trustee not less than five Business Days prior to (x) in the case of a substitution of the contingent convertible capital securities of any series pursuant to “—Substitution and Variation”, the issue date of the relevant securities or (y) in the case of a variation of the contingent convertible capital securities of any series pursuant to “—Substitution and Variation”, the date such variation becomes effective, provided that such securities shall:

(i) contain terms which comply with the then current requirements for their inclusion in the Tier 1 Capital of Banco Santander; and

(ii) carry the same rate of interest as the contingent convertible capital securities of such series prior to the relevant substitution or variation pursuant to “—Substitution and Variation”; and

(iii) have the same denomination and aggregate outstanding principal amount as the contingent convertible capital securities prior to the relevant substitution or variation pursuant to “—Substitution and Variation”; and

(iv) have the same date of maturity, if applicable, and the same dates for payment of interest as the contingent convertible capital securities prior to the relevant substitution or variation pursuant to “—Substitution and Variation”; and

(v) have at least the same ranking as the contingent convertible capital securities; and

(vi) not, immediately following such substitution or variation, be subject to a Capital Event and/or a Tax Event; and

(vii) be listed or admitted to trading on any stock exchange as selected by Banco Santander, if the contingent convertible capital securities were listed or admitted to trading on a stock exchange immediately prior to the relevant substitution or variation pursuant to “—Substitution and Variation.”

“Recognized Stock Exchange” means a regulated regularly operating, recognized stock exchange or securities market in an OECD member state;

“Redemption Price” means, per contingent convertible capital security, the Liquidation Preference plus, if applicable, where not cancelled pursuant to, or otherwise subject to the limitations on payment set out in “—Distributions”, an amount equal to accrued and unpaid Distributions for the then current Distribution Period to (but excluding) the date fixed for redemption of the contingent convertible capital securities of the relevant series;

“Reference Page” means the relevant page on Bloomberg or Reuters or such other information service provider that displays the relevant information;



“Regulator” means the European Central Bank, the Bank of Spain or such other or successor authority exercising primary bank supervisory authority, in each case with respect to prudential matters in relation to Banco Santander and/or the Group from time to time;

“Relevant Resolution Authority” means the Spanish Fund for the Orderly Restructuring of Banks or the European Single Resolution Mechanism, as the case may be, according to Law 11/2015, and any other entity with the authority to exercise the Bail-in Power or any other resolution power from time to time.

“Relevant Stock Exchange” means the Spanish Stock Exchanges or if at the relevant time the Common Shares are not at that time listed and admitted to trading on the Spanish Stock Exchanges, the principal stock exchange or securities market on which the Common Shares are then listed, admitted to trading or quoted or accepted for dealing;

“Risk Weighted Assets Amount” means at any time, with respect to Banco Santander or the Group, as the case may be, the aggregate amount (in the Accounting Currency) of the risk weighted assets of Banco Santander or the Group, respectively, calculated in accordance with Applicable Banking Regulations at such time;

“Scheme of Arrangement” has the meaning given in the definition of “Newco Scheme”;

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

“Settlement Shares Depository” means a reputable independent financial institution, trust company or similar entity to be appointed by Banco Santander on or prior to any date when a function ascribed to the Settlement Shares Depository is required to be performed to perform such functions and who will hold Common Shares in Iberclear or any of its participating entities in a designated trust or custody account for the benefit of the holders of the contingent convertible capital securities of any series and otherwise on terms consistent with the terms of the contingent convertible capital securities and the contingent convertible capital securities indenture;

“Share Currency” means euro or such other currency in which the Common 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 Common Shares;

“Spanish Companies Act” means the consolidated text of the Spanish Companies Act (*Ley de Sociedades de Capital*), as amended, approved by the Royal Decree Legislative 1/2010, of 2 July 2010;

“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 (SIBE)*);

“Specified Date” has the meanings given in sub-paragraphs (d), (f), (g) and (h) of “—*Anti-Dilution Adjustment of the Floor Price*” below, as applicable;

“Spin-Off” means:

- (a) a distribution of Spin-Off Securities by Banco Santander to 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 Banco Santander) 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 depository 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 Banco Santander or any member of the Group;

“Spin-Off Securities” means equity share capital of an entity other than Banco Santander or options, warrants or other rights to subscribe for or purchase equity share capital of an entity other than Banco Santander;



200FX&=8eN31qX0LA

“Subsidiary” means any entity over which Banco Santander may have, directly or indirectly, control in accordance with Applicable Banking Regulations;

“Tax Event” in respect of any series of contingent convertible capital securities, means that as a result of any change in the laws or regulations of Spain or in either case of any political subdivision thereof or any authority or agency therein or thereof having power to tax or in the interpretation or administration of any such laws or regulations which becomes effective on or after the date of issue of the contingent convertible capital securities of such series Banco Santander shall determine that (a) Banco Santander would not be entitled to claim a deduction in computing taxation liabilities in Spain (as defined in “—Additional Amounts” below) in respect of any Distribution to be made on the next Distribution Payment Date or the value of such deduction to Banco Santander would be materially reduced, or (b) Banco Santander would be required to pay Additional Amounts (as defined below), or (c) the applicable tax treatment of the contingent convertible capital securities of such series changes in a material way that was not reasonably foreseeable at the issue date;

“Tier 1 Capital” means at any time, with respect to Banco Santander or the Group, as the case may be, the Tier 1 capital of Banco Santander or the Group, respectively, as calculated by Banco Santander in accordance with Chapters 1, 2 and 3 (Tier 1 Capital, Common Equity Tier 1 Capital and Additional Tier 1 capital) of Title I (Elements of own funds) of Part Two (Own Funds) of the CRR and/or Applicable Banking Regulations at such time, including any applicable transitional, phasing in or similar provisions;

“Tier 2 Capital” means at any time, with respect to Banco Santander or the Group, as the case may be, the Tier 2 capital of Banco Santander or the Group, respectively, as calculated by Banco Santander in accordance with Chapter 4 (Tier 2 capital) of Title I (Elements of own funds) of Part Two (Own Funds) of the CRR and/or Applicable Banking Regulations at such time, including any applicable transitional, phasing in or similar provisions.

“Trigger Conversion” has the meaning given in “—Conversion Procedures” below;

“Trigger Event” means if, at any time, the CET1 ratio of Banco Santander or the Group calculated in accordance with Applicable Banking Regulations is less than 5.125 percent, as determined by Banco Santander or the Regulator;

“Trigger Event Notice” has the meaning given in “—Conversion Procedures” below;

“Trigger Event Notice Date” means the date on which a Trigger Event Notice is given;

“U.S.\$” and “U.S. dollars” means the lawful currency of the United States of America;

“U.S. Government Securities Business Day” means any day except for a Saturday, Sunday or a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for the purposes of trading in U.S. government securities;

“Volume Weighted Average Price” means, in respect of a Common Share, Security or, as the case may be, a Spin-Off Security on any dealing day, the order book volume-weighted average price of a Common Share, Security or, as the case may be, a Spin-Off Security published by or derived (in the case of a Common Share) from the Reference Page or (in the case of a Security (other than Common Shares) or Spin-Off Security) from the principal stock exchange or securities market on which such Securities or Spin-Off Securities are then listed or quoted or dealt in, if any or, in any such case, such other source 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 a Common 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; and

“Voting Rights” means the right generally to vote at a general meeting of Shareholders of Banco Santander (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 happening of any contingency).



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 in accordance therewith or under such modification or re-enactment.

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.

**Payments**

Banco Santander will make any payments of Distributions and Liquidation Preference on any particular series of contingent convertible capital securities on the dates and, in the case of payments of Distributions, in the amounts that are determined by the method of calculation described in, the relevant prospectus supplement. All payments in respect of the contingent convertible capital securities of any series will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment (including FATCA, any regulations or agreements thereunder, any official interpretation thereof, any intergovernmental agreements with respect thereto, or any law implementing an intergovernmental agreement or any regulations or official interpretations relating thereto), but without prejudice to the provisions of “—*Additional Amounts*” below.

***Distributions***

The contingent convertible capital securities of any series will accrue non-cumulative cash distributions (“Distributions”) as may be specified in, or determined in accordance with the provisions of, the relevant prospectus supplement.

*Distributions Discretionary*

Banco Santander may elect, in its sole and absolute discretion, to cancel the payment of any Distribution in whole or in part at any time that it deems necessary or desirable, and for any reason.

Distributions on the contingent convertible capital securities will be non-cumulative. Accordingly, if any Distribution (or part thereof) is not paid in respect of the contingent convertible capital securities of any series as a result of any election of Banco Santander to cancel such Distribution pursuant this section “—*Distributions Discretionary*” or the limitations on payment set out in “—*Restrictions on Payments*” 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 Banco Santander 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 contingent convertible capital securities of such series are paid in respect of any future Distribution Period.

No such election to cancel the payment of any Distribution (or part thereof) or non-payment of any Distribution (or part thereof) as a result of the limitations on payment set out in “—*Restrictions on Payments*” below will constitute an event of default, an Enforcement Event or the occurrence of any event related to the insolvency of Banco Santander or entitle holders to take any action to cause such Distribution to be paid or the liquidation, dissolution or winding-up of Banco Santander or in any way limit or restrict Banco Santander from making any distribution or equivalent payment in connection with any instrument ranking junior to the contingent convertible capital securities of such series (including, without limitation, any CET1 Capital of Banco Santander or the Group) or in respect of any other Parity Security or other security.

*Restrictions on Payments*

To the extent that (i) Banco Santander has insufficient Available Distributable Items to make Distributions on the contingent convertible capital securities of such series scheduled for payment in the then current financial year and any equivalent payments scheduled to be made in the then current financial year in respect of any other Parity Securities or CET1 Capital securities then outstanding to the extent permitted by the Applicable Banking Regulations, in each case excluding any portion of such payments already accounted for in determining the Available Distributable Items, and/or (ii) the Regulator, in accordance with Applicable Banking Regulations,



requires Banco Santander to cancel the relevant Distribution in whole or in part, then Banco Santander will, without prejudice to the right above to cancel at its discretion the payment of any such Distributions on the contingent convertible capital securities of such series at any time, make partial or, as the case may be, no payment of the relevant Distribution on the contingent convertible capital securities of such series.

No Distribution will be made on the contingent convertible capital securities of any series until the Maximum Distributable Amount (if required) is calculated and if and to the extent that such payment would cause the Maximum Distributable Amount (if any) then applicable to Banco Santander and/or the Group to be exceeded.

### ***Agreement to Distribution Cancellation***

By acquiring contingent convertible capital securities, holders and beneficial owners of the contingent convertible capital securities acknowledge and agree that:

(a) Distributions are payable solely at Banco Santander's discretion, and no amount of Distribution shall become or remain due and payable in respect of the relevant Distribution Period to the extent that it has been cancelled by Banco Santander at Banco Santander's sole discretion and/or deemed cancelled as a result of our having insufficient Available Distributable Items or as a result of the Regulator requiring Banco Santander to cancel the Distributions or as a result of exceeding the Maximum Distributable Amount (if any) then applicable to Banco Santander and/or the Group; and

(b) a cancellation or deemed cancellation of Distributions (in each case, in whole or in part) in accordance with the terms of the contingent convertible capital securities indenture or applicable supplemental indenture and the contingent convertible capital securities shall not constitute an Enforcement Event or other default under the terms of the contingent convertible capital securities or the contingent convertible capital securities indenture or applicable supplemental indenture.

Distributions will only be due and payable on a Distribution Payment Date to the extent they are not cancelled or deemed cancelled previously or thereafter in accordance with the provisions described under "*—Distributions*", "*—Liquidation Distribution*" and "*—Conversion Upon Trigger Event*". Any Distributions cancelled or deemed cancelled (in each case, in whole or in part) in the circumstances described herein shall not be due and shall not accumulate or be payable at any time thereafter, and holders of the contingent convertible capital securities shall have no rights thereto or to receive any additional Distributions or compensation as a result of such cancellation or deemed cancellation.

### ***Notice of Distribution Cancellation***

If practicable, Banco Santander will provide notice of any cancellation or deemed cancellation of Distributions (in each case, in whole or in part) to the holders of the contingent convertible capital securities through the relevant Clearing System (or, if the contingent convertible capital securities are held in definitive form, to the holders of the contingent convertible capital securities directly at their addresses shown on the register for the contingent convertible capital securities) and to the Trustee directly on or prior to the relevant Distribution Payment Date. Failure to provide such notice will have no impact on the effectiveness of, or otherwise invalidate, any such cancellation or deemed cancellation of Distributions (and accordingly, such Distributions will not be due and payable), or give the holders of the contingent convertible capital securities any rights as a result of such failure.

### **Liquidation Distribution**

Except as set forth in the following paragraph, in the event of any voluntary or involuntary liquidation of Banco Santander (a "Liquidation Event"), holders of the contingent convertible capital securities of any series (unless previously converted into Common Shares pursuant to "*—Conversion Upon Trigger Event*" below) shall be entitled to receive out of the assets of Banco Santander available for distribution to holders of such series, the Liquidation Distribution. Such entitlement will arise before any distribution of assets is made to holders of Common Shares or any other instrument of Banco Santander ranking junior to the contingent convertible capital securities of such series.

If, before the occurrence of a Liquidation Event, the Trigger Event occurs but the relevant conversion of the contingent convertible capital securities of such series into Common Shares pursuant to "*—Conversion Upon Trigger Event*" below is still to take place, holders of the contingent convertible capital securities of such series will



be entitled to receive out of the relevant assets of Banco Santander a monetary amount equal to that which holders of such contingent convertible capital securities of such series would have received on any distribution of the assets of Banco Santander if such conversion had taken place immediately prior to such liquidation.

After payment of the relevant entitlement in respect of a contingent convertible capital security as described in this section, such contingent convertible capital security will confer no further right or claim to any of the remaining assets of Banco Santander.

### Subordination

Unless previously converted into Common Shares pursuant to section “—*Conversion Upon Trigger Event*” below, the payment obligations of Banco Santander under the contingent convertible capital securities on account of the Liquidation Preference or otherwise of principal constitute direct, unconditional, unsecured and subordinated obligations (*créditos subordinados*) of Banco Santander and, in accordance with Additional Provision 14.2<sup>o</sup> of Law 11/2015, but subject to any other ranking that may apply as a result of any mandatory provision of law (or otherwise), upon the insolvency of Banco Santander for so long as the obligations of Banco Santander in respect of the contingent convertible capital securities constitute an Additional Tier 1 Instrument, rank:

- (a) *pari passu* among themselves and with (i) all other claims in respect of any liquidation preference or otherwise for principal in respect of any outstanding Additional Tier 1 Instruments and (ii) any other subordinated obligations (*créditos subordinados*) which by law and/or by their terms, to the extent permitted by Spanish law, rank *pari passu* with Banco Santander’s obligations under Additional Tier 1 Instruments;
- (b) junior to (i) any unsubordinated obligations of Banco Santander, (ii) any subordinated obligations (*créditos subordinados*) of Banco Santander which become subordinated pursuant to Article 92.1<sup>o</sup> of the Spanish Insolvency Law and (iii) any other subordinated obligations (*créditos subordinados*) which by law and/or by their terms, to the extent permitted by Spanish law, rank senior to Banco Santander’s obligations under Additional Tier 1 Instruments; and
- (c) senior to (i) any claims for the liquidation amount of the Common Shares and (ii) any other subordinated obligations (*créditos subordinados*) of Banco Santander which by law and/or by their terms, to the extent permitted by Spanish law, rank junior to Banco Santander’s obligations under Additional Tier 1 Instruments.

Banco Santander agrees with respect to any series of contingent convertible capital securities and each holder of contingent convertible capital securities of any series, by his or her acquisition of a contingent convertible capital security, will be deemed to have agreed to the above described subordination. Each such holder will be deemed to have irrevocably waived his or her rights of priority which would otherwise be accorded to him or her under the laws of Spain, to the extent necessary to effectuate the subordination provisions of the contingent convertible capital security. In addition, each holder of contingent convertible capital securities of any series by his or her acquisition of the securities authorizes and directs the applicable trustee on his or her behalf to take such action as may be necessary or appropriate to effectuate the subordination of the relevant contingent convertible capital securities as provided in the contingent convertible capital securities indenture and as summarized herein and appoints the applicable trustee his or her attorney-in-fact for any and all such purposes.

Banco Santander may not issue, or guarantee the issue of, any Parity Securities or other instruments equivalent to Parity Securities, either directly or through a guarantee, ranking senior to the contingent convertible capital securities of any series, unless the terms and conditions of the contingent convertible capital securities of such series are amended so as to rank *pari passu* with any such issue of senior securities.

### Redemption and Repurchase

The contingent convertible capital securities are perpetual and are only redeemable in accordance with the following provisions of the contingent convertible capital securities indenture described in this section “—*Redemption and Repurchase*”.



200FX&=&eN3mYvKsQ

***Optional Redemption***

Unless otherwise provided in the applicable prospectus supplement, subject to certain exceptions described further below, the contingent convertible capital securities shall not be redeemable prior to the date specified in the relevant prospectus supplement. The contingent convertible capital securities of any series may be redeemed by Banco Santander following such date in whole but not in part, unless otherwise provided by the applicable prospectus supplement, subject to (i) the prior consent of the Regulator and (ii) the final paragraph of “Redemption Procedures” below, on the date or dates specified in the relevant prospectus supplement at the Redemption Price (and otherwise in accordance with Applicable Banking Regulations then in force).

***Pre-Conditions to Redemptions and Repurchases***

Article 78(1) of the CRR provides that the Regulator will give its consent to a redemption of the contingent convertible capital securities provided that either of the following conditions is met:

(a) on or before such redemption of the contingent convertible capital securities, Banco Santander replaces the contingent convertible capital securities with instruments qualifying as Tier 1 Capital of an equal or higher quality on terms that are sustainable for the income capacity of Banco Santander; or

(b) Banco Santander has demonstrated to the satisfaction of the Regulator that its Tier 1 Capital and Tier 2 Capital would, following such redemption, exceed the requirements set forth in Article 92(1) of the CRR and the combined buffer requirement as defined in point (6) of Article 128 of the CRD IV Directive by a margin that the Regulator may consider necessary on the basis of Article 104(3) of the CRD IV Directive.

***Redemption Due to a Capital Event***

Unless otherwise provided in the applicable prospectus supplement, if, on or after the issue date of the contingent convertible capital securities of any series, (i) there is a Capital Event, and (ii) such circumstances are evidenced by the delivery by Banco Santander to the Trustee of a certificate signed by two directors of Banco Santander stating that the said circumstances prevail and describing the facts leading thereto and a copy of the Regulator’s consent to the redemption, the contingent convertible capital securities of such series may be redeemed, in whole but not in part, at the option of Banco Santander, subject to the prior consent of the Regulator and otherwise in accordance with Applicable Banking Regulations then in force, at any time, at the Redemption Price.

Article 78(4) of the CRR provides that the Regulator may only permit Banco Santander to redeem any series contingent convertible capital securities before the fifth anniversary of the date of issuance of contingent convertible capital securities of such series in the case of a Capital Event if, in addition to meeting one of the conditions referred to in paragraphs (a) or (b) of Article 78(1) of the CRR (as described above), there is a change in the regulatory classification of the contingent convertible capital securities of such series that would be likely to result in their exclusion from own funds or reclassification as a lower quality form of own funds, the Regulator considers such change to be sufficiently certain and Banco Santander demonstrates to the satisfaction of the Regulator that the regulatory classification was not reasonably foreseeable at the date of issuance of contingent convertible capital securities of such series.

***Redemption Due to a Tax Event***

Unless otherwise provided in the applicable prospectus supplement, if, on or after the date of issuance of any series of contingent convertible capital securities, (i) there is a Tax Event, and (ii) such circumstances are evidenced by the delivery by Banco Santander to the Trustee of a certificate signed by two directors of Banco Santander stating that the said circumstances prevail and describing the facts leading thereto and a copy of the Regulator’s consent to the redemption, the contingent convertible capital securities of such series may be redeemed, in whole but not in part, at the option of Banco Santander, subject to the prior consent of the Regulator and otherwise in accordance with Applicable Banking Regulations then in force, at any time, at the Redemption Price per contingent convertible capital security.

Article 78(4) of the CRR provides that the Regulator may only permit Banco Santander to redeem the contingent convertible capital securities of any series before the fifth anniversary of the date of issuance of contingent convertible capital securities of such series in the case of a Tax Event if, in addition to meeting one of the





conditions referred to in paragraphs (a) or (b) of Article 78(1) of the CRR (as described above), there is a change in the applicable tax treatment of the contingent convertible capital securities of such series and Banco Santander demonstrates to the satisfaction of the Regulator that such Tax Event is material and was not reasonably foreseeable at the date of issuance of contingent convertible capital securities of such series.

### ***Redemption Procedures***

The decision to redeem the contingent convertible capital securities must be irrevocably notified by Banco Santander to holders of the contingent convertible capital securities of such series upon not less than 30 nor more than 60 days' notice prior to the relevant redemption date (i) through the filing of a relevant event (*hecho relevante*) announcement with the CNMV and its publication in accordance with the rules and regulations of any applicable stock exchange or other relevant authority and (ii) in accordance with “—*Notices*” below, and to the Trustee at least five (5) Business Days prior to such date, unless a shorter notice period shall be satisfactory to the Trustee.

Any notice of redemption will state: the redemption date; that on the redemption date the Redemption Price will, subject to the satisfaction of the conditions set forth in the contingent convertible capital securities indenture become due and payable upon each contingent convertible capital security being redeemed and that, subject to certain exceptions, Distributions will cease to accrue on or after that date; the place or places where the contingent convertible capital securities are to be surrendered for payment of the redemption price; and the CUSIP, Common Code and/or ISIN number or numbers, if any, with respect to the contingent convertible capital securities being redeemed.

If Banco Santander gives notice of redemption of the contingent convertible capital securities of any series, then by 12:00 noon (London time) on the relevant redemption date, Banco Santander will:

- (a) irrevocably deposit with the Principal Paying Agent funds sufficient to pay the Redemption Price; and
- (b) give the Principal Paying Agent irrevocable instructions and authority to pay the Redemption Price to the holders.

If the notice of redemption has been given on any series of contingent convertible capital securities, 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 contingent convertible capital securities of such series shall cease to accrue;
- (b) such contingent convertible capital securities of such series will no longer be considered outstanding; and
- (c) the holders of contingent convertible capital securities of such series will no longer have any rights as holders except the right to receive the Redemption Price.

### ***Non-payment of Redemption Price***

If in connection with any series of contingent convertible capital securities either the notice of redemption has been given and the funds are not deposited as required on the date of such deposit or if Banco Santander improperly withholds or refuses to pay the Redemption Price of the contingent convertible capital securities of such series, Distributions will continue to accrue, subject as provided in “—*Distributions*” above, at the rate specified from the redemption date to (but excluding) the date of actual payment of the Redemption Price.

Banco Santander may not give a notice of redemption pursuant to this section “—*Redemption and Repurchase*” if a Trigger Event Notice has been given. If a Trigger Event Notice is given after a notice of redemption shall have been given by Banco Santander but before the redemption has occurred, such notice of redemption shall automatically be revoked and be null and void and the relevant redemption shall not be made.

### ***Repurchases of Contingent Convertible Capital Securities***

Unless otherwise provided in the applicable prospectus supplement, Banco Santander and any of its subsidiaries or any third party designated by any of them, may at any time repurchase contingent convertible capital securities of any series in the open market or otherwise at any price, in accordance with Applicable Banking Regulations in force at the relevant time.



Notwithstanding any other provision of “—*Settlement Procedures*” below and subject to compliance with the provisions of the Spanish Companies Act and/or with any Applicable Banking Regulations, Banco Santander 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 Banco Santander (including Conversion Shares) or any depositary or other receipts or certificates representing the same without the consent of the holders.

### Conversion Upon Trigger Event

If the Trigger Event occurs at any time on or after the issue date of any series of contingent convertible capital securities, then Banco Santander will:

(a) not declare or pay any Distribution on the contingent convertible capital securities of such series, including any accrued and unpaid Distributions, which shall be cancelled by Banco Santander in accordance with “—*Distributions—Restrictions on Payments*” above; and

(b) irrevocably and mandatorily (and without any requirement for the consent or approval of the holders of contingent convertible capital securities of such series) convert all the contingent convertible capital securities of such series into Common Shares (the “Trigger Conversion”) to be delivered on the relevant Conversion Settlement Date. If the Trigger Event occurs, the contingent convertible capital securities of any series will be converted in whole and not in part.

For the purposes of Banco Santander determining whether the Trigger Event has occurred, it will calculate the CET1 ratio based on information (whether or not published) available to management of Banco Santander, including information internally reported within Banco Santander pursuant to its procedures for ensuring effective ongoing monitoring of the capital ratios of Banco Santander and the Group. Banco Santander publishes the CET1 ratio on at least a quarterly basis. Banco Santander’s or the Regulator’s calculation shall be binding on the Trustee and the holders of the relevant series of contingent convertible capital securities.

Except as provided below with respect to fractions, the number of Conversion Shares shall be determined by dividing the Liquidation Preference of such contingent convertible capital security by the relevant Conversion Price in effect on the relevant Trigger Event Notice Date. Fractions of Common Shares will not be issued on Trigger Conversion and no cash payment or other adjustment will be made in lieu thereof. Without prejudice to the generality of the foregoing, if one or more Delivery Notices and the related contingent convertible capital securities are received by or on behalf of the Paying and Conversion Agent such that the Conversion Shares or related ADSs to be delivered by or on behalf of the Settlement Shares Depository are to be registered in the same name or delivered to the same Clearing Agency participant account, the number of such Conversion Shares to be delivered in respect thereof shall be calculated on the basis of the aggregate Liquidation Preference of such contingent convertible capital securities being so converted and rounded down to the nearest whole number of Common Shares or related ADSs, as applicable.

Upon any Trigger Event of any series of contingent convertible capital securities, holders shall have no claim against Banco Santander in respect of (i) any Liquidation Preference of such series of contingent convertible capital securities or (ii) any accrued and unpaid Distributions cancelled or otherwise unpaid in respect of contingent convertible capital securities of such series and the contingent convertible capital securities of such series shall cease to represent any right other than the right to receive Common Shares, if elected, or ADSs from or on behalf of the Settlement Shares Depository.

On the Conversion Settlement Date, Banco Santander shall deliver to the Settlement Shares Depository such number of Common Shares as is required to satisfy in full Banco Santander’s obligation to deliver Common Shares in respect of the Trigger Conversion of the aggregate Liquidation Preference of contingent convertible capital securities of such series outstanding on the Trigger Event Notice Date.

The obligation of Banco Santander to issue and deliver Conversion Shares to a holder of contingent convertible capital securities of any series on the relevant Conversion Settlement Date shall be satisfied by the delivery of such Conversion Shares to the Settlement Shares Depository. Receipt of the relevant Conversion Shares by the Settlement Shares Depository shall discharge Banco Santander’s obligations in respect of such contingent convertible capital securities.



Holders of any series of contingent convertible capital securities shall have recourse to Banco Santander only for the issue and delivery of the relevant Conversion Shares to the Settlement Shares Depository. After such delivery, holders of any series of contingent convertible capital securities shall have recourse to the Settlement Shares Depository only for the delivery to them of such Conversion Shares or related ADSs, in the circumstances described in “—*Settlement Procedures*” below.

**Conversion Price**

“Conversion Price” means, on the Trigger Event Notice Date, if the Common Shares are:

- (a) then admitted to trading on a Relevant Stock Exchange, the higher of:
  - (i) the Current Market Price of a Common Share;
  - (ii) the Floor Price; and
  - (iii) the nominal value of a Common Share, in each case on the Trigger Event Notice Date; or
- (b) not then admitted to trading on a Relevant Stock Exchange, the higher of (ii) and (iii) above.

*Anti-Dilution Adjustment of the Floor Price*

For the purposes of this section “—*Anti-Dilution Adjustment of the Floor Price*” only (a) references to the “issue” of Common Shares or Common Shares being issued shall, if not otherwise expressly specified in this “Description of Contingent Convertible Capital Securities”, include the transfer and/or delivery of Common Shares, whether newly issued and allotted or previously existing or held by or on behalf of Banco Santander or any member of the Group, and (b) Common Shares held by or on behalf of Banco Santander or any member of the Group (and which, in the case of sub-paragraphs (d) and (f) below, 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.

Upon the happening of any of the events described below and unless otherwise provided in the relevant prospectus supplement, the Floor Price of any series of contingent convertible capital securities shall be adjusted as follows:

(a) If and whenever there shall be a consolidation, reclassification/redesignation or subdivision affecting the number of Common 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 Common Shares in issue immediately before such consolidation, reclassification/redesignation or subdivision, as the case may be; and
- B is the aggregate number of Common 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 Banco Santander shall issue any Common Shares credited as fully paid to Shareholders by way of capitalization of profits or reserves (including any share premium account or capital redemption reserve) other than (i) where any such Common Shares are or are to be issued instead of the whole or part of a Cash Dividend which Shareholders would or could otherwise have elected to receive, (ii) where Shareholders may elect to receive a Cash Dividend in lieu of such Common Shares or (iii) where any such Common Shares are or are expressed to be



issued in lieu of a Dividend (whether or not a Cash Dividend equivalent or amount is announced or would otherwise be payable to Shareholders, whether at their election or otherwise), 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 Common Shares in issue immediately before such issue; and
- B is the aggregate number of Common Shares in issue immediately after such issue.

Such adjustment shall become effective on the first day on which Common Shares are traded ex-rights on the relevant Stock Exchange.

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

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

where:

- A is the Current Market Price of one Common Share on the Effective Date;
- B is the portion of the Fair Market Value of the aggregate Extraordinary Dividend attributable to one Common Share, with such portion being determined by dividing the Fair Market Value of the aggregate Extraordinary Dividend by the number of Common Shares entitled to receive the relevant Dividend; and
- C is the amount (if any) by which the Reference Amount determined in respect of the Relevant Dividend exceeds an amount equal to the aggregate of the Fair Market Values of any previous Cash Dividends per Common Share paid or made in such Relevant Year (where C shall equal zero if such previous Cash Dividends per Common Share are equal to, or exceed, the Reference Amount in respect of the Relevant Year). For the avoidance of doubt, "C" shall equal the Reference Amount determined in respect of the Relevant Dividend where no previous Cash Dividends per Common Share have been paid or made in such Relevant Year.

Such adjustment shall become effective on the Effective Date or, if later, the first date upon which the Fair Market Value of the relevant Extraordinary Dividend can be determined.

"Effective Date" means, in respect of this sub-paragraph (i), the first date on which the Common Shares are traded ex-the relevant Cash Dividend on the Relevant Stock Exchange.

"Extraordinary Dividend" means (i) any Cash Dividend which is expressly declared by Banco Santander to be a capital distribution, extraordinary dividend, extraordinary distribution, special dividend, special distribution or return of value to its shareholders or any analogous or similar term (including any distribution made as a result of any capital reduction), in which case the Extraordinary Dividend shall be such Cash Dividend; or (ii) any Cash Dividend (the "Relevant Dividend") paid or made in a financial year of Banco Santander (the "Relevant Year") if (A) the Fair Market Value of the Relevant Dividend per Common Share or (B) the sum of (I) the Fair Market Value of the Relevant Dividend per Common Share and (II) an amount equal to the aggregate of the Fair Market Value or Fair Market Values of any other Cash Dividend or Cash Dividends per Common Share paid or made in the Relevant Year (other than any Cash Dividend or part thereof previously determined to be an Extraordinary Dividend paid or made in such Relevant Year), exceeds the Reference Amount, and in that case the Extraordinary Dividend shall be the amount by which the Reference Amount is so exceeded.



“Reference Amount” means an amount per Ordinary Share that is consistent with the dividend policy of Banco Santander as applied or to be applied for a period or projected period of at least three years.

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

Such adjustment shall become effective on the 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.

“Effective Date” means, in respect of this sub-paragraph (ii), the first date on which the Common Shares are traded ex-the relevant Dividend on the Relevant Stock Exchange or, in the case of a purchase, redemption or buy back of Common Shares or any depositary or other receipts or certificates representing Common Shares by or on behalf of Banco Santander 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) or in the case of a Spin-Off, the first date on which the Common Shares are traded ex-the relevant Spin-Off on the Relevant Stock Exchange.

(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 Effective Date.

(iv) In making any calculations for the purposes of this paragraph (c), such adjustments (if any) shall be made as an Independent Financial Adviser may determine in good faith to be appropriate to reflect (A) any consolidation or sub-division of any Common Shares or (B) the issue of Common Shares by way of capitalization of profits or reserves (or any like or similar event) or (C) any increase in the number of Common Shares in issue in the Relevant Year in question.

(d) If and whenever Banco Santander shall issue Common Shares to its shareholders as a class by way of rights, or Banco Santander or any member of the Group or (at the direction or request or pursuant to any arrangements with Banco Santander or any member of the Group) any other company, person or entity shall issue or grant to its shareholders as a class by way of rights, any options, warrants or other rights to subscribe for or purchase or otherwise acquire any Common 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 Common Shares (or shall grant any such rights in respect of existing Securities so issued), in each case at a price per Common Share which is less than 95 percent. of the Current Market Price per Common 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 Common Shares in issue on the Effective Date;
- B is the number of Common Shares which the aggregate consideration (if any) receivable for the Common 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 Common Shares deliverable on the exercise thereof, would purchase at such Current Market Price per Common Share; and
- C is the number of Common Shares to be issued or, as the case may be, the maximum number of Common 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 Common Shares are traded ex-rights, ex-options or ex-warrants on the Relevant Stock Exchange (as used in this sub-paragraph(d), the “Specified Date”) such number of Common 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 sub-paragraph (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 sub-paragraph (d), the first date on which the Common Shares are traded ex-rights, ex-options or ex-warrants on the Relevant Stock Exchange.

(e) If and whenever Banco Santander or any member of the Group or (at the direction or request or pursuant to any arrangements with Banco Santander or any member of the Group) any other company, person or entity shall issue any Securities (other than Common Shares or options, warrants or other rights to subscribe for or purchase or otherwise acquire any Common 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, Common Shares) to its shareholders as a class by way of rights or grant to its 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 Common Shares or options, warrants or other rights to subscribe for or purchase or otherwise acquire Common Shares or Securities which by their term carry (directly or indirectly) rights of conversion into, or exchange or subscription for, rights to otherwise acquire, Common 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 Common 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 Common Share.

Such adjustment shall become effective on the Effective Date.

“Effective Date” means, in respect of this sub-paragraph (e), the first date on which the Common Shares are traded ex-the relevant Securities or ex-rights, ex-option or ex-warrants on the Relevant Stock Exchange.

(f) If and whenever Banco Santander shall issue (otherwise than as mentioned in sub-paragraph (d) above) wholly for cash or for no consideration any Common Shares (other than Common Shares issued on conversion of the any series of contingent convertible capital securities or on the exercise of any rights of conversion into, or



exchange or subscription for or purchase of, or right to otherwise acquire Common Shares) or if and whenever Banco Santander or any member of the Group or (at the direction or request or pursuant to any arrangements with Banco Santander or any member of the Group) any other company, person or entity shall issue or grant (otherwise than as mentioned in sub-paragraph (d) above) wholly for cash or for no consideration any options, warrants or other rights to subscribe for or purchase or otherwise acquire any Common Shares (other than the contingent convertible capital securities of any series, which for this purpose include any Further Contingent Convertible Capital Securities), in each case at a price per Common Share which is less than 95 percent of the Current Market Price per Common 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 Common Shares in issue immediately before the issue of such Common Shares or the grant of such options, warrants or rights;
- B is the number of Common Shares which the aggregate consideration (if any) receivable for the issue of such Common Shares or, as the case may be, for the Common 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 Common Share on the Effective Date; and
- C is the number of Common Shares to be issued pursuant to such issue of such Common Shares or, as the case may be, the maximum number of Common 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 Common Shares or date of issue or grant of such options, warrants or rights (as used in this sub-paragraph (f), the "Specified Date"), such number of Common 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 sub-paragraph (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 sub-paragraph (f), the date of issue of such Common Shares or, as the case may be, the grant of such options, warrants or rights.

(g) If and whenever Banco Santander or any member of the Group or (at the direction or request of or pursuant to any arrangements with Banco Santander or any member of the Group) any other company, person or entity (otherwise than as mentioned in sub-paragraphs (d), (e) or (f) above) shall issue wholly for cash or for no consideration any Securities (other than contingent convertible capital securities of any series) 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, Common Shares (or shall grant any such rights in respect of existing Securities so issued) or Securities which by their terms might be reclassified/re-designated as Common Shares, and the consideration per Common Share receivable upon conversion, exchange, subscription, purchase, acquisition or redesignation is less than 95 percent of the Current Market Price per Common 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 Common 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 Common Shares which have been issued, purchased or acquired by Banco Santander or any member of the Group (or at the direction or request or pursuant to any arrangements with Banco Santander or any member of the Group) for the purposes of or in connection with such issue, less the number of such Common Shares so issued, purchased or acquired);
- B is the number of Common Shares which the aggregate consideration (if any) receivable for the Common 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 Common Shares to be issued or to arise from any such reclassification/redesignation would purchase at such Current Market Price per Common Share; and
- C is the maximum number of Common 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 Common 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 sub-paragraph (g), the "Specified Date") such number of Common 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 sub-paragraph (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 sub-paragraph (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 Securities (other than the contingent convertible capital securities of any series) as are mentioned in sub-paragraph (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 Common Share receivable has been reduced and is less than 95 percent of the Current Market Price per Common 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 Common 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, Common Shares which have been issued, purchased or acquired by Banco Santander or any member of the Group (or at the direction or request or pursuant to any arrangements with Banco Santander or any member of the Group) for the purposes of or in connection with such Securities, less the number of such Common Shares so issued, purchased or acquired);





- B is the number of Common Shares which the aggregate consideration (if any) receivable for the Common 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 Common 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 Common 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 sub-paragraph (h) or sub-paragraph (g) above;

provided that if at the time of such modification (as used in this sub-paragraph (h), the “Specified Date”) such number of Common 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 sub-paragraph (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 sub-paragraph (h), the date of modification of the rights of conversion, exchange, subscription, purchase or acquisition attaching to such Securities.

(i) If and whenever Banco Santander or any member of the Group or (at the direction or request of or pursuant to any arrangements with Banco Santander or any member of the Group) any other company, person or entity shall offer any Securities in connection with which its 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 sub-paragraphs (b), (c), (d), (e) or (f) above or sub-paragraph (j) below (or would fall to be so adjusted if the relevant issue or grant was at less than 95 percent of the Current Market Price per Common Share on the relevant dealing day under sub-paragraph (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 Common 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 Common Share.

Such adjustment shall become effective on the Effective Date.

“Effective Date” means, in respect of this sub-paragraph (i), the first date on which the Common Shares are traded ex-rights on the Relevant Stock Exchange.

(j) If Banco Santander 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 of the contingent convertible capital securities of such relevant series) in such manner and with effect from such date as Banco Santander shall determine and notify to the holders of the relevant series of contingent convertible capital securities.

Notwithstanding the foregoing provisions:

- (i) where the events or circumstances giving rise to any adjustment of the Floor Price 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 Banco Santander, 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 as may be determined in good faith by an Independent Financial Adviser 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 sub-paragraphs (d), (f), (g) and (h) above, the following provisions shall apply:

- (i) the aggregate consideration receivable or price for Common Shares issued for cash shall be the amount of such cash;
- (ii) (A) the aggregate consideration receivable or price for Common 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 (B) the aggregate consideration receivable or price for Common Shares to be 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 Banco Santander 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 sub-paragraphs (d), (f), (g) or (h) above, as the case may be, plus in the case of each of (A) and (B) 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 (C) the consideration receivable or price per Common Share upon the conversion or exchange of, or upon the exercise of such rights of subscription attached to, such Securities 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 (A) or (B) above (as the case may be) divided by the number of Common Shares to be issued upon such conversion or exchange or exercise at the initial conversion, exchange or subscription price or rate;
- (iii) if the consideration or price determined pursuant to (I) or (II) 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 (I) above) or the relevant date of first public announcement (in the case of (II) above);
- (iv) 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 Common Shares or Securities or options, warrants or rights, or otherwise in connection therewith; and
- (v) 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 Banco Santander or another entity.

If the record date in respect of any consolidation, reclassification/redesignation or sub-division as is mentioned in sub-paragraph (a) above, or 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 sub-paragraphs (b), (c), (d), (e) or (i) above,



or the date of the first public announcement of the terms of any such issue or grant as is mentioned in sub-paragraphs (f) and (g) above or of the terms of any such modification as is mentioned in sub-paragraph (h) above, shall be after the Trigger Event Notice Date in relation to the conversion of any contingent convertible capital security of any series but before the date on which the resolution of issuance of the relevant Common Shares is approved, then Banco Santander shall procure the execution of the corresponding adjustment mechanism pursuant to this section “—*Anti-Dilution Adjustment of the Floor Price*” so that there shall be issued and delivered to the Settlement Shares Depository, for onward delivery to the holders of the relevant contingent convertible capital securities, in accordance with the instructions contained in the Delivery Notices received by the Settlement Shares Depository, such number of Common Shares that could be required to be issued and delivered on such conversion taking into account the relevant adjustment to the Floor Price pursuant to this section “—*Anti-Dilution Adjustment of the Floor Price*” and all references to the issue and/or delivery of Common Shares or Conversion Shares in this prospectus and the contingent convertible capital securities indenture shall be construed accordingly.

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 Banco Santander 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 willful default, bad faith or manifest error.

No adjustment will be made to the Floor Price where Common 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 Banco Santander or any of member of the Group or any associated company or to a Trustee or Trustees or intermediary to be held for the benefit of any such person, in any such case pursuant to any share or option or similar scheme.

On any adjustment, the resultant Floor Price, if a number of more decimal places than the initial Floor Price, shall be rounded down to such decimal place. No adjustment shall be made to the Floor Price where such adjustment (rounded down if applicable) would be less than 1 percent 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 Banco Santander to holders of the contingent convertible capital securities of any series through the filing of a relevant event (*hecho relevante*) announcement with the CNMV and its publication in accordance with the rules and regulations of any applicable stock exchange or other relevant authority and in accordance with “—*Notices*” below promptly after the determination thereof.

***Conversion Procedures***

If the Trigger Event occurs at any time on or after the issue date of any series of contingent convertible capital securities, then Banco Santander will: notify the Regulator and holders of such series of contingent convertible capital securities immediately through (i) the filing of a relevant event (*hecho relevante*) announcement with the CNMV and its publication in accordance with the rules and regulations of any applicable stock exchange or other relevant authority and (ii) to the Regulator, holders and the Trustee in accordance with “—*Notices*” below (the “Trigger Event Notice”);

A Trigger Event Notice shall be a written notice specifying the following information:

- that a Trigger Event has occurred;
- the then-prevailing Conversion Price (which Conversion Price shall remain subject to any subsequent adjustment as set forth under “—*Anti-Dilution Adjustment of the Floor Price*”);
- the Conversion Settlement Date;



- the date on which Banco Santander expects DTC to suspend all clearance and settlement of transactions in the Securities in accordance with its rules and procedures (the “Suspension Date”);
- the contact details of the Settlement Shares Depository (if one has been appointed) and Paying and Conversion Agent and the procedures holders of the contingent convertible capital securities must follow to obtain delivery of the Conversion Shares or related ADSs;
- if Banco Santander has been unable to appoint a Settlement Shares Depository, such other arrangements for the issuance and/or delivery of the Conversion Shares to the holders of the contingent convertible capital securities of such series as it shall consider reasonable in the circumstances;
- that the contingent convertible capital securities shall remain in existence for the sole purpose of evidencing the holder’s right to receive Common Shares or related ADSs from or on behalf of the Settlement Shares Depository.

The failure to notify the Regulator and holders of such series contingent convertible capital securities as aforesaid will not invalidate the conversion.

The date on which the Trigger Event Notice shall be deemed to have been given shall be the date on which it is dispatched by Banco Santander to DTC.

Upon Banco Santander’s determination that a Trigger Event has occurred, it shall immediately inform the Regulator and shall, prior to giving a Trigger Event Notice, deliver to the Trustee a certificate stating that a Trigger Event has occurred, which the Trustee shall accept without any further enquiry as sufficient evidence of such matters, in which event such certificate will be conclusive and binding on the Trustee, the holders and beneficial owners of the contingent convertible capital securities of such series.

Within two (2) Business Days after its receipt of the Trigger Event Notice, the Trustee shall transmit the Trigger Event Notice to DTC and promptly following its receipt of the Trigger Event Notice, pursuant to DTC’s procedures currently in effect, DTC will post the Trigger Event Notice to its Reorganization Inquiry for Participants System.

Notwithstanding anything set forth in this prospectus to the contrary, once Banco Santander has delivered a Trigger Event Notice following the occurrence of a Trigger Event, (i) subject to the right of holders of the contingent convertible capital securities of the relevant series relating to a breach of the Performance Obligation (as defined below) in the event of a failure by Banco Santander to issue and deliver any Common Shares to the Settlement Shares Depository on the Conversion Settlement Date, the contingent convertible capital securities indenture shall impose no duties upon the Trustee whatsoever with regard to a Trigger Conversion and the holders of the contingent convertible capital securities of such series shall have no rights whatsoever under the contingent convertible capital securities indenture or the contingent convertible capital securities of such series to instruct the Trustee to take any action whatsoever and (ii) as of the date of the Trigger Event Notice, except for any indemnity and/or security provided by any holders of the contingent convertible capital securities of such series in such direction or related to such direction, any direction previously given to the Trustee by any holders of the contingent convertible capital securities of such series shall cease automatically and shall be null and void and of no further effect.

Banco Santander’s obligations to indemnify the Trustee in accordance with the contingent convertible capital securities indenture shall survive any Trigger Conversion.

***Agreement and Waiver with Respect to a Trigger Conversion***

The contingent convertible capital securities of any series are not convertible into Common Shares at the option of holders of contingent convertible capital securities of any series at any time and are not redeemable in cash as a result of a Trigger Event. Notwithstanding any other provision herein, by its acquisition of the contingent convertible capital securities of any series, each holder and beneficial owner shall be deemed to have (i) agreed to all the terms and conditions of the contingent convertible capital securities of such series, including, without limitation, those related to (x) Trigger Conversion following a Trigger Event and (y) the appointment of the Settlement Shares Depository, the issuance of the Settlement Shares to the Settlement Shares Depository (or to the relevant recipient in accordance with the terms of the contingent convertible capital securities of such series), and acknowledged that



such events in (x) and (y) may occur without any further action on the part of the holders of the contingent convertible capital securities of such series or the Trustee, (ii) agreed that effective upon, and following, the Trigger Conversion, no amount shall be due and payable to the holders of the contingent convertible capital securities of such series, and Banco Santander's liability to pay any such amounts (including the Liquidation Preference of, or any Distribution in respect of, the contingent convertible capital securities of such series), except as noted under "*Settlement Procedures*" with respect to certain stamp and similar taxes, shall be automatically released, and the holders shall not have the right to give a direction to the Trustee with respect to the Trigger Event and any related Trigger Conversion, (iii) waived, to the extent permitted by the Trust Indenture Act, any claim against the Trustee arising out of its acceptance of its trusteeship under, and the performance of its duties, powers and rights in respect of, the contingent convertible capital securities indenture and in connection with the contingent convertible capital securities of such series, including, without limitation, claims related to or arising out of or in connection with a Trigger Event and/or any Trigger Conversion and (iv) authorized, directed and requested DTC, the European Clearing Systems and any direct participant in DTC, the European Clearing Systems or other intermediary through which it holds such contingent convertible capital securities to take any and all necessary action, if required, to implement the Trigger Conversion without any further action or direction on the part of such holder or beneficial owner of the contingent convertible capital securities of such series or the Trustee.

### ***Settlement Procedures***

Delivery of the Common Shares to the holders of any series of contingent convertible capital securities upon a Trigger Event shall be made in accordance with the following procedures. The procedures set forth in this section are subject to change to reflect changes in clearing system practices.

Holders of any series of contingent convertible capital securities cleared and settled through DTC may elect to have their Common Shares delivered in the form of Common Shares or ADSs in accordance with the procedures described below. The obligation to deliver ADSs if a holder elects to have its Common Shares delivered in such form will apply only if at the time of any Trigger Conversion Banco Santander continues to maintain an ADS depository facility. For further information on the ADSs and Banco Santander's current ADS deposit agreement, see "Description of American Depository Shares".

*DTC Suspension.* The Trigger Event Notice shall specify the Suspension Date. On the Suspension Date, DTC shall suspend all clearance and settlement of transactions in the relevant series of contingent convertible capital securities. As a result, holders of the contingent convertible capital securities of such series will not be able to settle any transfers of any contingent convertible capital securities of such series following the Suspension Date, and any sale or other transfer of the contingent convertible capital securities of such series that a holder of the contingent convertible capital securities of such series may have initiated prior to the Suspension Date that is scheduled to settle after the Suspension Date will be rejected by DTC and will not be settled through DTC. The contingent convertible capital securities of such series may cease to be admitted to trading on any stock exchange on which the contingent convertible capital securities of such series are then listed or admitted to trading after the Suspension Date.

*Settlement Request Notice.* On the Suspension Date, Banco Santander shall deliver a notice in accordance with "*Notices*" below to the Trustee and to the holders of the contingent convertible capital securities of the relevant series (a "Settlement Request Notice") requesting that holders and beneficial owners of the contingent convertible capital securities of such series complete a notice to be delivered to the Paying and Conversion Agent, with a copy to the Trustee (a "Delivery Notice"). The Settlement Request Notice shall specify the date by which the Delivery Notice must be received by the Paying and Conversion Agent (the "Notice Cut-off Date") and (ii) the date on which the Contingent Convertible Capital Securities of such series in relation to which no Delivery Notice has been received by the Paying and Conversion Agent on or before the Notice Cut-off Date shall be cancelled, which will be no more than twelve Business Days after the Conversion Settlement Date (the "Final Cancellation Date"), as set forth in "*Failure to Deliver a Delivery Notice*" below.

*Delivery Notice.* In order to obtain delivery of the relevant Common Shares, or, if the holder elects, ADSs, a holder or beneficial owner must deliver its contingent convertible capital securities and Delivery Notice to the Paying and Conversion Agent (including, the delivery of such contingent convertible capital securities and Delivery Notice to the Paying and Conversion Agent through DTC) on or before the Notice Cut-off Date. If such delivery is made after the end of normal business hours at the specified office of the Paying and Conversion Agent, such delivery shall be deemed for all purposes to have been made or given on the following Business Day. The Delivery Notice shall contain: (i) the name of the holder or beneficial owner of the applicable series of contingent convertible



capital securities; (ii) the aggregate Liquidation Preference held by such holder or beneficial owner of such series of contingent convertible capital securities on the date of such notice; (iii) the name in which the Common Shares or ADSs, as applicable, are to be registered, if applicable (iv) whether Common Shares or ADSs are to be delivered to the holder or beneficial owner of such series of contingent convertible capital securities; (v) the details of the DTC, Iberclear or other clearing system account (subject to the limitations set out below) to which the ADSs or Common Shares are to be credited, details of the registered account in Banco Santander's ADS facility if direct registration ADSs are to be issued, or, if the Common Shares are not a participating security in Iberclear or another clearing system, the address to which the Common Shares should be delivered; and (vi) such other details as may be required by the Paying and Conversion Agent.

The Delivery Notice must be given and the contingent convertible capital securities delivered in accordance with the applicable procedures of DTC (which may include the notice being given to the Paying and Conversion Agent by electronic means) and in a form acceptable to DTC and the Paying and Conversion Agent.

Any Delivery Notice shall be irrevocable. Failure properly to complete and deliver a Delivery Notice and deliver the relevant contingent convertible capital securities may result in such Delivery Notice being treated as null and void and Banco Santander shall be entitled to procure the sale of any applicable Common Shares to which the relevant holder may be entitled in accordance with this section "*—Settlement Procedures*". Any determination as to whether any Delivery Notice has been properly completed and delivered as provided in this section "*—Settlement Procedures*" shall be made by Banco Santander in its sole discretion, acting in good faith, and shall, in the absence of manifest error, be conclusive and binding on the relevant holders.

Subject as provided herein and provided the contingent convertible capital securities and Delivery Notice are delivered on or before the Notice Cut-off Date, the Paying and Conversion Agent shall give instructions to the Settlement Shares Depository that the Settlement Shares Depository shall deliver the relevant Common Shares (rounded down to the nearest whole number of Common Shares) to, or shall deposit such relevant Common Shares with the ADS Depository on behalf of, the holder or beneficial owner of the relevant contingent convertible capital securities completing the relevant Delivery Notice or its nominee in accordance with the instructions given in such Delivery Notice on the applicable Conversion Settlement Date.

*Delivery of ADSs.* In respect of any Conversion Shares that holders elect to receive in the form of ADSs as specified in the Delivery Notice, the Settlement Shares Depository shall deposit with the custodian for the ADS Depository the number of Conversion Shares to be issued upon Trigger Conversion of the relevant series of contingent convertible capital securities, and the ADS Depository shall issue the corresponding number of ADSs to the DTC Participant account or registered ADS facility account specified by such holders (per the ADS-to-ordinary share ratio in effect on the Conversion Settlement Date). However, the issuance of the ADSs by the ADS Depository may be delayed until the depository bank or the custodian receives confirmation that all required approvals have been given and that the Conversion Shares have been duly transferred to the custodian and that all applicable depository fees and payments have been paid to the ADS Depository. For further information on the ADSs or the ADS deposit agreement, see "Description of American Depositary Shares".

*Failure to Deliver a Delivery Notice.* If a duly completed Delivery Notice and the relevant contingent convertible capital securities are not delivered to the Paying and Conversion Agent as provided above on or before the Notice Cut-off Date, then at any time following the Notice Cut-off Date and prior to the 10th Business Day after the Conversion Settlement Date Banco Santander may in its sole and absolute discretion (and the relevant holders of such contingent convertible capital securities shall be deemed to agree thereto), elect to appoint a person (the "Selling Agent") to procure that all Common Shares held by the Settlement Shares Depository in respect of which the applicable contingent convertible capital securities and completed Delivery Notice have not been delivered on or before the Notice Cut-off Date as aforesaid shall be sold by or on behalf of the Selling Agent as soon as reasonably practicable. If the applicable contingent convertible capital securities and Delivery Notice are not delivered to the Paying and Conversion Agent on or before the Notice Cut-off Date, the Settlement Shares Depository shall continue to hold any Conversion Shares not sold by the Selling Agent until a Delivery Notice is so delivered or the Final Cancellation Date (as defined below), whichever is earlier. However, any holder or beneficial owner of the contingent convertible capital securities delivering a Delivery Notice after the Notice Cut-off Date will have to provide evidence of its entitlement to the relevant Common Shares, or if the holder so elects, ADSs, satisfactory to the Settlement Shares Depository in its sole and absolute discretion in order to receive delivery of such Common Shares or ADSs (if so elected to be deposited with the ADS Depository on its behalf).



Subject to the deduction by or on behalf of the Selling Agent of any amount payable in respect of its liability to taxation and the payment of any capital, stamp, issue, registration and/or transfer taxes and duties (if any) and any fees or costs incurred by or on behalf of the Selling Agent in connection with the issue, allotment and sale thereof, and the conversion of any proceeds of such sale into U.S. dollars, the net proceeds of such sale, converted into U.S. dollars at the Prevailing Rate on the Notice Cut-off Date, if necessary, shall as soon as reasonably practicable be distributed rateably to the relevant holders in such manner and at such time as Banco Santander shall determine and notify to the relevant holders.

Such payment shall for all purposes discharge the obligations of Banco Santander, the Settlement Shares Depository, the Paying and Conversion Agent and the Selling Agent to such holders in respect of the Trigger Conversion.

Banco Santander, the Settlement Shares Depository and the Selling Agent shall have no liability in respect of the exercise or non-exercise of any discretion or power pursuant to this section “—*Settlement Procedures*” or in respect of any sale of any Common Shares, whether for the timing of any such sale or the price at or manner in which any such Common Shares are sold or the inability to sell any such Common Shares.

If Banco Santander does not appoint the Selling Agent by the 10th Business Day after the Conversion Settlement Date, or if any Common Shares are not sold by the Selling Agent in accordance with this section “*Settlement Procedures*”, such Common Shares for which a Delivery Notice has not been received will be cancelled on the Final Cancellation Date.

***Certain Taxes***

A holder of the contingent convertible capital securities of any series or Selling Agent (as defined below) must pay (in the case of the Selling Agent by means of deduction from the net proceeds of sale referred to in “—*Failure to Deliver a Delivery Notice*” below) any taxes and capital, stamp, issue and registration and transfer taxes or duties arising on Trigger Conversion (other than any taxes or capital, issue and registration and transfer taxes or stamp duties payable in Spain by Banco Santander in respect of the issue and delivery of the Common Shares in accordance with a Delivery Notice delivered pursuant to the contingent convertible capital securities indenture which shall be paid by Banco Santander) and such holder or the Selling Agent (as the case may be) must pay (in the case of the Selling Agent, 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 contingent convertible capital security or interest therein.

If Banco Santander 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 Selling Agent, as the case may be, shall be entitled (but shall not be obliged) to tender and pay the same and Banco Santander as a separate and independent obligation, undertakes to reimburse and indemnify each holder or Selling Agent, as the case may be, in respect of any payment thereof and any penalties payable in respect thereof.

***Status of the Conversion Shares***

The Common Shares issued on Trigger Conversion will be fully paid and will in all respects rank *pari passu* with the fully paid Common Shares in issue on the Trigger Event Notice Date, except in any such case for any right excluded by mandatory provisions of applicable law and except that such Common Shares will not rank for (or, as the case may be, the relevant holder shall not be entitled to receive) any rights, dividends or payments the record date or other due date for the establishment of entitlement for which falls prior to the date that the resolution of issuance of the relevant Common Shares is approved.

***Additional Amounts***

Unless otherwise specified in the relevant prospectus supplement, all payments of Distributions and other amounts payable in respect of contingent convertible capital securities by Banco Santander 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 (collectively “*Taxes*”) of whatever nature imposed or levied by or on behalf of Spain or any political subdivision thereof or any authority or agency therein or thereof having power to tax, unless the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law. In that event, Banco Santander shall pay, in respect of any withholding or deduction imposed on payments of Distributions only (and not Liquidation Preference) such additional amounts



(“Additional Amounts”) as will result in holders of any series of outstanding contingent convertible capital securities receiving such amounts as they would have received had no such withholding or deduction been required, provided that no payments of Additional Amounts will be made if and to the extent that Banco Santander has insufficient Available Distributable Items to pay such additional amounts, Distributions on the contingent convertible capital securities of any series scheduled for payment in the then current financial year and any equivalent payments scheduled to be made in the then current financial year in respect of any other Parity Securities and CET1 Capital securities then outstanding, in each case excluding any portion of such payments already accounted for in determining the Available Distributable Items.

However, Banco Santander shall not be required to pay any Additional Amounts in relation to any payment in respect of any contingent convertible capital securities:

(a) to, or to a third party on behalf of, a holder if the holder or the beneficial owner of contingent convertible capital securities is liable for such Taxes in respect of such contingent convertible capital security by reason of his having some connection with Spain other than the mere holding of such contingent convertible capital security; or

(b) to, or to a third party on behalf of, a holder or the beneficial owner in respect of whose contingent convertible capital securities Banco Santander does not receive such information as may be required in order to comply with the applicable Spanish tax reporting obligations (as amended or restated from time to time), including but not limited to the receipt in a timely manner of a duly executed and completed certificate in accordance with Law 10/2014 and Royal Decree 1065/2007, as amended, and any implementing legislation or regulation; or

(c) to, or to a third party on behalf of, a holder if the holder or the beneficial owner of contingent convertible capital securities of any series failed to make any necessary claim or to comply with any certification, identification or other requirements concerning the nationality, residence, identity or connection with the taxing jurisdiction of such holder or beneficial owner, if such claim or compliance is required by statute, treaty, regulation or administrative practice of the taxing jurisdiction of Banco Santander as a condition to relief or exemption from such taxes; or

(d) presented for payment (where presentation is required) more than 30 days after the Relevant Date, except to the extent that the relevant holder would have been entitled to such Additional Amounts on presenting the same for payment on the expiry of such period of 30 days; or

(e) in relation to any estate, inheritance, gift, sales, transfer or similar taxes; or

(f) to, or to a third party on behalf of, individuals resident for tax purposes in the Kingdom of Spain; or

(g) to, or to a third party on behalf of, a Spanish-resident legal entity subject to Spanish corporation tax if the Spanish tax authorities determine that the contingent convertible capital securities of any series do not comply with exemption requirements specified in the Reply to a Consultation of the Directorate General for Taxation (*Dirección General de Tributos*) dated 27 July 2004 and require a withholding to be made; or

(h) where the withholding or deduction is required pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to Sections 1471 through 1474 of the Code, any regulations or agreements thereunder, any official interpretations thereof, any intergovernmental agreements with respect thereto (including the intergovernmental agreement between the United States and Spain on the implementation of FATCA), or any law implementing an intergovernmental agreement or any regulations or official interpretations relating thereto.

In addition, Additional Amounts will not be payable with respect to any Taxes that are imposed in respect of any combination of the items listed in (a) through (h) set forth above.

Additional Amounts will also not be paid with respect to any payment to a holder who is a fiduciary, a partnership, a limited liability company or person other than the sole beneficial owner of that payment, to the extent that payment would be required by the laws of Spain (or any political subdivision thereof) to be included in the income, for tax purposes, of a beneficiary or settlor with respect to the fiduciary, a member of that partnership, an interest holder in that limited liability company or a beneficial owner who would not have been entitled to the Additional Amounts had it been the holder.





For the purposes of this section:

“Relevant Date” means, in respect of any payment, the date on which such payment first becomes due and payable, except that, if the full amount of the moneys payable has not been duly received by the Principal Paying Agent on or prior to such due date, it means the date on which, the full amount of such moneys having been so received and being available for payment to holders, notice to that effect is duly given to the holders in accordance with “—Notices” below.

Except where the context requires otherwise, any reference in this prospectus and the relevant prospectus supplement to Distributions in respect of the contingent convertible capital securities shall include any Additional Amounts payable with respect thereto.

### Undertakings

So long as any contingent convertible capital security of a series remains outstanding, Banco Santander shall, unless approved by a majority in aggregate Liquidation Preference of such series:

(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, Common 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 Common 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 specified offices of the Paying and Conversion Agents and, where such an offer or scheme has been recommended by the board of directors of Banco Santander, or where such an offer has become or been declared unconditional in all respects or such scheme has become effective, use all commercially reasonable endeavours to procure that a like offer or scheme is extended to the holders of any Common Shares issued during the period of the offer or scheme arising out of the Trigger Conversion;

(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 the contingent convertible capital securities indenture immediately after completion of the Scheme of Arrangement as are necessary to ensure that the contingent convertible capital 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 the contingent convertible capital securities indenture 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 of the contingent convertible capital securities of the relevant series irrevocably authorize Banco Santander to make such amendments to the contingent convertible capital securities indenture without the need for any further authorization from the holders of the contingent convertible capital securities of such series;

(d) issue, allot and deliver Common Shares upon Trigger Conversion subject to and as provided in “—*Conversion Upon Trigger Event*” above;

(e) use all reasonable endeavors to ensure that its issued and outstanding Common Shares and any Common 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 Recognized Stock Exchange;

(f) at all times keep in force the relevant resolutions needed for issue, free from pre-emptive rights, sufficient authorized but unissued Common Shares to enable Trigger Conversion of the contingent convertible capital securities, and all rights of subscription and exchange for Common Shares, to be satisfied in full; and

(g) where the provisions of “—*Conversion Upon Trigger Event*” above require or provide for a determination by an Independent Financial Adviser or a role to be performed by a Settlement Shares Depository or a Paying and Conversion Agent, Banco Santander shall use all reasonable endeavors promptly to appoint such persons for such purposes.



### Modification and Waiver

Banco Santander and the Trustee may make certain modifications and amendments to the contingent convertible capital securities indenture and any applicable supplemental indenture with respect to any series of contingent convertible capital securities of that series without the consent of the holders of such contingent convertible capital securities, including for, but not limited to, any of the following purposes:

- to evidence the succession of another corporation to Banco Santander and the assumption by any such successor of the covenants of Banco Santander in the contingent convertible capital securities indenture and in the contingent convertible capital securities of any series;
- to add to the covenants of Banco Santander for the benefit of the holders of all or any series of contingent convertible capital securities (and, if such covenants are to be for the benefit of less than all series of contingent convertible capital securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power conferred upon Banco Santander by the contingent convertible capital securities indenture;
- to add any additional Enforcement Events;
- to make changes to procedures relating to Trigger Conversion, delivery of the Common Shares, or ADSs, as applicable;
- to change or eliminate any of the provisions of the contingent convertible capital securities indenture, or any supplemental indenture, provided that any such change or elimination shall become effective only when there is no outstanding contingent convertible capital security of any series created prior to the execution of such supplemental indenture that is entitled to the benefit of such provision or as to which such supplemental indenture would apply;
- to secure the contingent convertible capital securities;
- to change any place of payment, so long as a place of payment as required by the contingent convertible capital securities indenture is maintained;
- to cure any ambiguity, to correct or supplement any provision of the contingent convertible capital securities indenture which may be defective or inconsistent with any other provision of the contingent convertible capital securities indenture or in any supplemental indenture;
- to evidence and provide for the acceptance of appointment under the contingent convertible capital securities indenture by a successor Trustee with respect to the contingent convertible capital securities of one or more series and to add to or change any of the provisions of the contingent convertible capital securities indenture as shall be necessary to provide for or facilitate the administration of the trusts under the contingent convertible capital securities indenture by more than one Trustee, pursuant to the requirements of the contingent convertible capital securities indenture;
- to change or eliminate any provision of the contingent convertible capital securities indenture so as to conform with the current provisions or any future provisions of the Trust Indenture Act;
- with respect to any contingent convertible capital security (including a global security), to amend any such contingent convertible capital security to conform to the description of the terms of such contingent convertible capital security in the prospectus, prospectus supplement, product supplement, pricing supplement or any other similar offering document related to the offering of such contingent convertible capital security; and
- to change or modify any provision of the contingent convertible capital securities indenture as necessary to ensure that the contingent convertible capital securities of any series shall be convertible into ordinary shares of Newco in the event of a Newco Scheme



Other modifications and amendments may be made to the contingent convertible capital securities indenture and any applicable supplemental indenture with the consent of not less than a majority in aggregate outstanding Liquidation Preference of the contingent convertible capital securities of the series outstanding under the contingent convertible capital securities indenture and any applicable supplemental indenture that are affected by the modification or amendment, voting as one class. However, no modifications or amendments may be made without the consent of the holder of each contingent convertible capital security affected that would:

- change the terms of any contingent convertible capital security to include a stated maturity date;
- reduce the Liquidation Preference of, the Distribution rates of, or the payments with respect to any contingent convertible capital security, other than as permitted under the contingent convertible capital securities indenture and any applicable supplemental indenture;
- change Banco Santander’s (or any successor’s) obligation to pay Additional Amounts;
- change the currency of payment;
- reduce the percentage in aggregate Liquidation Preference of outstanding contingent convertible capital securities of the series necessary to modify or amend the applicable indenture or to waive compliance with certain provisions of the contingent convertible capital securities indenture and any applicable supplemental indenture;
- impair the right to institute suit for the enforcement of any payment due and payable;
- modify the subordination provisions or the terms of Banco Santander’s obligations in respect of the payment of amounts due and payable on the contingent convertible capital securities in a manner adverse to the holders, in each case other than as permitted under the contingent convertible capital securities indenture or applicable supplemental indenture;
- modify the provisions of the contingent convertible capital securities indenture affecting the calculation of, and any adjustment to, the Conversion Price; or
- modify the above requirements.

In addition to the permitted amendments described in the preceding paragraph, Banco Santander and the Trustee may amend or supplement the contingent convertible capital securities indenture or the contingent convertible capital securities of any series and the related supplemental indenture without the consent of any holders of the contingent convertible capital securities of such series to conform the provisions of the contingent convertible capital securities indenture to this “Description of Contingent Convertible Capital Securities” section in this registration statement and the applicable prospectus supplement.

Any agreements, arrangements or understandings between Banco Santander and any holder and beneficial owner of the contingent convertible capital securities of any series with respect to the contingent convertible capital securities of such series must be entered into in accordance with the terms of the contingent convertible capital securities indenture and any applicable supplemental indenture.

In addition, unless the relevant prospectus supplement provides otherwise, any variations in the terms and conditions of the contingent convertible capital securities of any series, including modifications relating to the subordination or redemption provisions of such contingent convertible capital securities, can only be made in accordance with the rules and requirements of the Regulator, as and to the extent applicable from time to time.

No vote of the outstanding holders of the contingent convertible capital securities of any series will be required for Banco Santander to redeem and cancel the contingent convertible capital securities of such series.



Notwithstanding that the contingent convertible capital securities of any series confer an entitlement to vote under any of the circumstances described above, neither Banco Santander nor any Subsidiary, to the extent that it is a holder of the contingent convertible capital securities of such series of Banco Santander, shall be so entitled to vote.

The holders of any series of contingent convertible capital securities of any series will have no voting rights at any extraordinary or ordinary meetings of Shareholders of Banco Santander.

### Additional Issuances

Banco Santander may, without the consent of the holders of the contingent convertible capital securities of any series, issue additional contingent convertible capital securities of such series having the same ranking and same Distribution Rate, redemption terms and other terms as the contingent convertible capital securities of such series described in the relevant prospectus supplement except for the price to the public, original Distribution accrual date, issue date and first Distribution Payment Date, provided however that such additional contingent convertible capital securities will not have the same CUSIP, ISIN or other identifying number as the outstanding contingent convertible capital securities of the relevant series unless the additional contingent convertible capital securities are fungible with the outstanding contingent convertible capital securities of the relevant series for U.S. federal income tax purposes. Any such additional contingent convertible capital securities, together with the contingent convertible capital securities of the relevant series offered by the relevant prospectus supplement, will constitute a single series of securities under the contingent convertible capital securities indenture. There is no limitation on the amount of contingent convertible capital securities that Banco Santander may issue under the contingent convertible capital securities indenture.

Banco Santander may without the consent or sanction of the holders of the relevant series of contingent convertible capital securities: (i) take any action required to issue additional Parity Securities or authorize, create and issue one or more other series of Parity Securities ranking equally with the contingent convertible capital securities of such series, as to the participation in the profits and/or assets of Banco Santander, without limit as to the amount; or (ii) take any action required to authorize, create and issue one or more other classes or series of shares of Banco Santander or securities mandatorily convertible into Common Shares of Banco Santander ranking junior to the contingent convertible capital securities of any series, as to the participation in the profits and/or assets of Banco Santander.

By acquiring a contingent convertible capital security of any series, each holder of contingent convertible capital securities of such series agrees to renounce any rights of seniority or preference that may be conferred upon it (if any) under applicable Spanish law over any holder of such other Parity Securities issued by Banco Santander from time to time.

The contingent convertible capital securities of any series do not grant the holders of the contingent convertible capital securities of such series pre-emption rights in respect of any possible future issues of Parity Securities or any other securities by Banco Santander or any Subsidiary.

### Substitution of Issuer

Banco Santander may, without the consent of the holders of any of the contingent convertible capital securities of any series, consolidate with, amalgamate, merge into or transfer or lease Banco Santander's assets substantially as an entirety to any person, provided that (a) any successor corporation formed by any consolidation, amalgamation or merger, or any transferee or lessee of Banco Santander's assets, is a company organized under the laws of any part of the European Union that expressly assumes, by a supplemental indenture, Banco Santander's obligations on the contingent convertible capital securities of such series and under the contingent convertible capital securities indenture, and such supplemental indenture to be executed by Banco Santander and such successor entity, if applicable, and delivered to the Trustee, in form satisfactory to the Trustee; (b) immediately after giving effect to such consolidation, amalgamation or merger, no Enforcement Event and no event which, after notice or lapse of time or both, would become an Enforcement Event, shall have occurred and be continuing; (c) Banco Santander shall have delivered to the Trustee an officer's certificate and an opinion of counsel in such forms as are required in the relevant indenture. In such event, Additional Amounts under the contingent convertible capital securities of such series will be payable for taxes imposed by the jurisdiction of incorporation or tax residence of the successor entity (subject to exceptions equivalent to those that apply to the obligation to pay Additional Amounts for taxes imposed by the laws of Spain) rather than taxes imposed by Spain.



Any direct or indirect subsidiary of Banco Santander may assume the obligations of Banco Santander under the contingent convertible capital securities of any series, subject to the prior consent of the European Central Bank, if required, with respect to any series of contingent convertible capital securities, without the consent of the holders of the any series of contingent convertible capital securities, provided that (a) the successor entity shall expressly assume such obligations by an amendment to the contingent convertible capital securities indenture, executed by Banco Santander and such successor entity, if applicable, and delivered to the Trustee, in form satisfactory to the Trustee, and Banco Santander shall, by amendment of the contingent convertible capital securities indenture, unconditionally guarantee all of the obligations of such successor entity under the contingent convertible capital securities of such series and the contingent convertible capital securities indenture as so modified by such amendment; (b) immediately after giving effect to such assumption of obligations, no Enforcement Event and no event which, after notice or lapse of time or both, would become an Enforcement Event, shall have occurred and be continuing; and (c) Banco Santander shall have delivered to the Trustee an officer's certificate and an opinion of counsel in such forms as are required in the contingent convertible capital securities indenture. In the event of any assumption, Additional Amounts under the contingent convertible capital securities of such series will be payable for taxes imposed by the jurisdiction of incorporation or tax residence of the assuming entity (subject to exceptions equivalent to those that apply to the obligation to pay Additional Amounts for taxes imposed by the laws of Spain) rather than taxes imposed by Spain.

Additional Amounts for payments of Distributions due prior to the date of the assumption will be payable only for taxes imposed by Spain. The assuming corporation will also be entitled to redeem the contingent convertible capital securities of any series in the circumstances described above under the section “—Redemption Due to a Tax Event” for any change or amendment to, or change in the application or official interpretation of, the laws or regulations of the assuming entity's jurisdiction of incorporation or tax residence, which change or amendment must, in the case of a substituted issuer, occur subsequent to the date of such assumption if the assuming entity is not incorporated or tax resident in Spain. Upon such assumption, Banco Santander will be released from all its obligations under the applicable contingent convertible capital securities and contingent convertible capital securities indenture and any supplemental indentures.

*An assumption of the obligations of Banco Santander under any series of contingent convertible capital securities might be considered for U.S. federal income tax purposes to be an exchange by the holders of the contingent convertible capital securities of such series for new contingent convertible capital securities, resulting in recognition of taxable gain or loss for these purposes and possible other adverse tax consequences for such holders. Holders should consult their tax advisors regarding the U.S. federal, state and local income tax consequences of an assumption.*

**Substitution and Variation**

With respect to contingent convertible capital securities of any series, if a Capital Event or a Tax Event occurs and is continuing, Banco Santander may substitute all (but not some) of the contingent convertible capital securities of any series or modify the terms of all (but not some) of the contingent convertible capital securities of such series, without any requirement for the consent or approval of the holders of the contingent convertible capital securities of such series, so that they are substituted for, or varied to, become, or remain, Qualifying Notes, subject to having given not less than 30 nor more than 60 days' notice to the holders of the contingent convertible capital securities of such series in accordance with the terms described under “—Notices” and to the Trustee (which notice shall be irrevocable and shall specify the date for substitution or, as applicable, variation).

Any such notice shall specify the relevant details of the manner in which such substitution or variation shall take effect and where the holders of the contingent convertible capital securities of such series can inspect or obtain copies of the new terms and conditions of the contingent convertible capital securities. Such substitution or variation will be effected without any cost or charge to such holders.

The contingent convertible capital of any series shall cease to bear interest from (an including) the date of substitution thereof.



Any holder or beneficial owner of the contingent convertible capital securities of any series shall, by virtue of its acquisition of the contingent convertible capital securities of any series or any beneficial interest therein, be deemed to accept the substitution or variation of the terms of the contingent convertible capital securities of such series and to grant to Banco Santander full power and authority to take any action and/or to execute and deliver any document in the name and/or on behalf of such holder which is necessary or convenient to complete the substitution or variation of the terms of the contingent convertible capital securities of such series.

**Governing Law**

The contingent convertible capital securities of any series, the contingent convertible capital securities indenture and any supplemental indentures will be governed by and construed in accordance with the laws of the State of New York, except that the authorization and execution by Banco Santander of the indentures and the contingent convertible capital securities, certain provisions of the contingent convertible capital securities and the contingent convertible capital securities indenture related to the subordination of the contingent convertible capital securities as well as the price at which contingent convertible capital securities can be issued, certain minimum requirements with respect to the conversion price and the legal regime applicable for the exclusion of the pre-emptive rights shall be governed by and construed in accordance with Spanish law.

**Waiver of Right of Set-off**

Subject to applicable law, neither any holder or beneficial owner of the contingent convertible capital securities of any series nor the Trustee acting on behalf of the holders of the contingent convertible capital securities of such series may exercise, claim or plead any right of set-off, compensation or retention in respect of any amount owed to it by Banco Santander in respect of, or arising under, or in connection with, the contingent convertible capital securities of such series or the contingent convertible capital securities indenture and each holder and beneficial owner of the contingent convertible capital securities of such series, by virtue of its holding of any contingent convertible capital securities of such series or any interest therein, and the Trustee acting on behalf of the holders of the contingent convertible capital securities of such series, shall be deemed to have waived all such rights of set-off, compensation or retention. If, notwithstanding the above, any amounts due and payable to any holder or beneficial owner of a contingent convertible capital security of any series or any interest therein by Banco Santander in respect of, or arising under, the contingent convertible capital securities of such series are discharged by set-off, such holder or beneficial owner shall, subject to applicable law, immediately pay an amount equal to the amount of such discharge to Banco Santander (or, if a Liquidation Event (as defined below) shall have occurred, the liquidator or administrator of Banco Santander, as the case may be) and, until such time as payment is made, shall hold an amount equal to such amount in trust (where possible) or otherwise for Banco Santander (or the liquidator or administrator of Banco Santander, as the case may be) and, accordingly, any such discharge shall be deemed not to have taken place.

**Trustee and Agents**

Unless stated otherwise in the relevant prospectus supplement, the Trustee for the contingent convertible capital securities of any series will be The Bank of New York Mellon acting through its London Branch. The Trustee makes no representations, and shall not be liable with respect to, the information set forth in this registration statement.

Unless stated otherwise in the relevant prospectus supplement, The Bank of New York Mellon acting through its London Branch will initially act as Principal Paying Agent and Calculation Agent for the contingent convertible capital securities of any series. Banco Santander may appoint additional or successor agents (together, the "Agents").

Banco Santander will procure that there will at all times be a Principal Paying Agent and a Calculation Agent. Banco Santander may change the Principal Paying Agent without prior notice to the holders of the contingent convertible capital securities of any series, and in such an event Banco Santander may act as Principal Paying Agent. Banco Santander is entitled to appoint other banks of international standing as Agents, or, in the case of the Calculation Agent only, Banco Santander may appoint a financial adviser with appropriate expertise. Furthermore, Banco Santander is entitled to terminate the appointment of any Agent. In the event of such termination or such Agent being unable or unwilling to continue to act as Agent in the relevant capacity, Banco Santander will appoint another bank of international standing, or, in the case of the Calculation Agent only, another financial adviser with appropriate expertise as Agent in the relevant capacity. Such appointment or termination will be published without undue delay in accordance with the contingent convertible capital securities indenture or, should this not be possible, be published in another appropriate manner.



**Agreement and Acknowledgement with Respect to the Exercise of the Bail-in Power**

Notwithstanding any other term of the contingent convertible capital securities of any series or any other agreements, arrangements, or understandings between Banco Santander and any holder of the contingent convertible capital securities of any series, by its acquisition of the contingent convertible capital securities of any series, each holder (which, for the purposes of this clause, includes each holder of a beneficial interest in the contingent convertible capital securities of any series) acknowledges, accepts, consents to and agrees to be bound by the exercise of any Bail-in Power (as defined herein) by the Relevant Resolution Authority that may result in the write-down or cancellation of all or a portion of the Amounts Due on the contingent convertible capital securities and/or the conversion of all or a portion of the Amounts Due on the contingent convertible capital securities into shares or other securities or other obligations of Banco Santander or another person, including by means of a variation to the terms of the contingent convertible capital securities to give effect to the exercise by the Relevant Resolution Authority of such Bail-in Power. Each holder of the contingent convertible capital securities further acknowledges and agrees that the rights of the holders of the contingent convertible capital securities are subject to—, and will be varied, if necessary, so as to give effect to—, the exercise of any Bail-in Power by the Relevant Resolution Authority.

For the avoidance of doubt, the potential write-down or cancellation of all or a portion of the principal amount of—or distributions on—the contingent convertible capital securities or the conversion of the contingent convertible capital securities into shares, other security or other obligations in connection with the exercise of any Bail-in Power by the Relevant Resolution Authority is separate and distinct from a conversion or write-Down following a Trigger Event although these events may occur consecutively.

For these purposes, the “Amounts Due” are the Liquidation Preference, together with any accrued but unpaid Distributions, and Additional Amounts, if any, due on the contingent convertible capital securities of any series. References to such amounts will include amounts that have become due and payable, but which have not been paid, prior to the exercise of the Bail-in Power by the Relevant Resolution Authority.

For these purposes, a “Bail-in Power” means any statutory write-down and/or conversion power existing from time to time under any laws, regulations, rules or requirements in effect in the Kingdom of Spain relating to the resolution of Regulated Entities applicable to Banco Santander or other Regulated Entities of the group, including (but not limited to) (i) the transposition of the BRRD (including but not limited to, Law 11/2015, Royal Decree 1012/2015 and any other implementing regulations) as amended or superseded from time to time, (ii) Regulation (EU) No. 806/2014 of the European Parliament and of 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 superseded from time to time, the “SRM Regulation”) and (iii) the instruments, rules and standards created thereunder, pursuant to which any obligation of a Regulated Entity (or an affiliate of such Regulated Entity) can be reduced, cancelled and/or converted into shares or other securities or obligations of such Regulated Entity (or affiliate of such Regulated Entity) or any other person.

“Regulated Entities” means any legal person to which BRRD, as implemented in the Kingdom of Spain (including but not limited to, Law 11/2015, Royal Decree 1012/2015 and any other implementing regulations) as amended or superseded from time to time), the SRM Regulation, or any other Spanish law relating to Bail-in Power, applies, which includes, certain credit entities, investment firms, and certain parent or holding companies.

Upon Banco Santander being informed or notified by the Relevant Resolution Authority of the actual exercise of the date from which the Bail-in Power is effective with respect to the contingent convertible capital securities, Banco Santander will provide a written notice to the holders of the contingent convertible capital securities of such series without delay regarding the exercise of the Bail-in Power. Any delay or failure by Banco Santander to give notice shall not affect the validity and enforceability of the Bail-in Power nor the effects on the contingent convertible capital securities described in this clause. Banco Santander will also deliver a copy of such notice to the Trustee for information purposes.



No repayment or payment of Amounts Due, if any, on the contingent convertible capital securities of any series, will become due and payable or be paid after the exercise of any Bail-in Power by the Relevant Resolution Authority if and to the extent such amounts have been reduced, converted, cancelled, amended or altered as a result of such exercise.

The exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the contingent convertible capital securities shall not constitute an event of default and the terms and conditions of the contingent convertible capital securities shall continue to apply in relation to the residual principal amount of, or outstanding amount payable with respect to, the contingent convertible capital securities subject to any modification of the amount of distributions payable to reflect the reduction of the principal amount, and any further modification of the terms that the Relevant Resolution Authority may decide in accordance with applicable laws and regulations relating to the resolution of credit institutions, investment firms and/or Group entities incorporated in the relevant Member State. Neither a reduction or cancellation, in part or in full of the Amounts Due on, the conversion thereof into another security or obligation of Banco Santander or another person, as a result of the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to Banco Santander, nor the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the contingent convertible capital securities of any series will be an Enforcement Event.

By its acquisition of the contingent convertible capital securities of any series, each holder of the contingent convertible capital securities of such series, (which, for the purposes of this clause, includes each holder of a beneficial interest in the contingent convertible capital securities of such series), to the extent permitted by the Trust Indenture Act, will waive any and all claims, in law and/or in equity, against the Trustee for, agree not to initiate a suit against the Trustee in respect of, and agree that the Trustee will not be liable for, any action that the Trustee takes, or abstains from taking, in either case in accordance with the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the contingent convertible capital securities of such series.

Additionally, by its acquisition of the contingent convertible capital securities of any series, each holder of the contingent convertible capital securities of such series acknowledges and agrees that, upon the exercise of the Bail-in Power by the Relevant Resolution Authority:

(i) the Trustee will not be required to take any further directions from the holders of the contingent convertible capital securities of such series with respect to any portion of the contingent convertible capital securities of such series that are written-down, converted to equity and/or cancelled under the contingent convertible capital securities indenture, which authorizes holders of a majority in aggregate outstanding Liquidation Preference of the contingent convertible capital securities of such series to direct certain actions relating to the contingent convertible capital securities of such series; and

(ii) the contingent convertible capital securities indenture will not impose any duties upon the Trustee whatsoever with respect to the exercise of the Bail-in Power by the Relevant Resolution Authority;

*provided, however*, that notwithstanding the exercise of the Bail-in Power by the Relevant Resolution Authority, so long as the contingent convertible capital securities of any series remain outstanding, there will at all times be a Trustee for the contingent convertible capital securities of such series in accordance with the contingent convertible capital securities indenture, and the resignation and/or removal of the Trustee and the appointment of a successor Trustee will continue to be governed by the contingent convertible capital securities indenture, including to the extent no additional supplemental indenture or amendment is agreed upon in the event the contingent convertible capital securities of such series remain outstanding following the completion of the exercise of the Bail-in Power.

By its acquisition of the contingent convertible capital securities of any series, each holder of the contingent convertible capital securities of such series acknowledges and agrees that neither a cancellation or deemed cancellation of the Liquidation Preference or Distributions (in each case, in whole or in part), nor the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the contingent convertible capital securities of such series will give rise to a default for purposes of Section 315(b) (Notice of Default) and Section 315(c) (Duties of the Trustee in Case of Default) of the Trust Indenture Act.

By purchasing the contingent convertible capital securities of any series, each holder (including each beneficial owner) of the contingent convertible capital securities of such series shall be deemed to have authorized, directed and requested DTC and any direct participant in DTC or other intermediary through which it holds contingent





convertible capital securities of such series to take any and all necessary action, if required, to implement the exercise of the Bail-in Power with respect to the contingent convertible capital securities of such series as it may be imposed, without any further action or direction on the part of such holder.

Each holder of the contingent convertible capital securities also acknowledges and agrees that the foregoing description of the Bail-in power and its exercise is exhaustive on the matters described herein to the exclusion of any other agreements, arrangements or understandings relating to the application of any Bail-in Power to the contingent convertible capital securities.

**Enforcement Events and Remedies**

There are no events of default under any series of contingent convertible capital securities. In addition, under the terms of the contingent convertible capital securities indenture neither the Trigger Conversion nor the exercise of the Bail-in Power or any other resolution tools by the Relevant Resolution Authority or any action in compliance therewith will be an Enforcement Event.

***Enforcement Events***

Each of the following events described in clauses (i), (ii) and (iii) is an “Enforcement Event” with respect to the contingent convertible capital securities of any series:

(i) non-payment of Redemption Price when due as further described in “—*Redemption and Repurchase—Non-payment of Redemption Price*” above;

(ii) the breach of any term, obligation or condition binding on Banco Santander under the contingent convertible capital securities of any series or the contingent convertible capital securities indenture (other than any of Banco Santander’s payment obligations under or arising from the contingent convertible capital securities of any series or the contingent convertible capital securities indenture, including payment of any Liquidation Preference or Distributions, including any damages awarded for breach of any obligations) (a “Performance Obligation”); or

(iii) the occurrence of a Liquidation Event prior to the occurrence of a Trigger Event.

Neither a cancellation of contingent convertible capital securities of any series, a reduction, in part or in full, of the principal amount of contingent convertible capital securities of any series or any accrued and unpaid interest on such contingent convertible capital securities, the conversion thereof into another security or obligation of Banco Santander or another person, in each case as a result of the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to Banco Santander, nor the exercise of any Bail-on Power by the Relevant Resolution Authority with respect to such contingent convertible capital securities will be an Enforcement Event or otherwise constitute non-performance of a contractual obligation, or entitle the holders of such securities to any remedies, which are hereby expressly waived.

In addition, the Trigger Conversion will not constitute an Enforcement Event or the occurrence of any event related to the insolvency of Banco Santander or entitle holders to take any action to cause the liquidation, dissolution or winding-up of the Banco Santander.

***Remedies***

The sole remedies of the holders of the contingent convertible capital securities of a series and the Trustee under the contingent convertible capital securities of such series or the contingent convertible capital securities indenture upon the occurrence of an Enforcement Event shall be (1) to seek enforcement of Banco Santander’s obligation to pay the Redemption Price of the securities of such series if not paid within 14 days of the date fixed for redemption (provided that the applicable conditions described under “—*Redemption and Repurchase*” above shall have been satisfied), (2) to seek enforcement of a Performance Obligation, and (3) to enforce the entitlement described under “—*Liquidation Distribution*” above. The foregoing shall not prevent the holders of the contingent convertible capital securities of such series or the Trustee from instituting proceedings for the bankruptcy of Banco Santander.

For the avoidance of doubt, the breach by Banco Santander of any Performance Obligation shall not give the Trustee and/or the holders of the contingent convertible capital securities of any series a claim for damages, and, in such circumstances, the sole and exclusive remedy that the Trustee and/or the holders of the contingent convertible



capital securities of such series may seek under the contingent convertible capital securities of such series and the contingent convertible capital securities indenture is specific performance under New York law. By its acquisition of the contingent convertible capital securities of any series, each holder of the contingent convertible capital securities of such series will acknowledge and agree that such holder will not seek, and will not direct the Trustee to seek, a claim for damages against Banco Santander in respect of a breach by Banco Santander of a Performance Obligation and that the sole and exclusive remedy that such holder and the Trustee may seek under the contingent convertible capital securities of such series and the contingent convertible capital securities indenture for a breach by Banco Santander of a Performance Obligation is specific performance under New York law.

#### ***No Other Remedies***

Other than the limited remedies specified above, no remedy against Banco Santander shall be available to the Trustee (acting on behalf of the holders of the contingent convertible capital securities of any series) or to the holders of the contingent convertible capital securities of such series, provided that (1) the Trustee shall have such powers as are required to be authorized to it under the Trust Indenture Act in respect of the rights of the holders under the provisions of the contingent convertible capital securities indenture and (2) nothing shall impair the rights of a holder of the contingent convertible capital securities under the Trust Indenture Act, absent such holder's consent, to sue for any payment due but unpaid in respect of the contingent convertible capital securities, provided that, in the case of (1) and (2), any payments in respect of, or arising from, the contingent convertible capital securities of such series including any payments or amounts resulting or arising from the enforcement of any rights under the Trust Indenture Act in respect of the contingent convertible capital securities of such series shall be subject to the subordination provisions of the contingent convertible capital securities indenture. For the avoidance of doubt, such limitations shall not apply to Banco Santander's obligations to pay the fees and expenses of, and to indemnify, the Trustee.

The contingent convertible capital securities of any series are perpetual securities in respect of which there is no fixed redemption date or maturity date. Holders of the contingent convertible capital securities of any series may not require any redemption of the contingent convertible capital securities of such series at any time.

#### ***Trustee's Duties***

If an Enforcement Event has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by the contingent convertible capital securities indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs. Holders of not less than a majority in aggregate Liquidation Preference of the outstanding contingent convertible capital securities of any series may on behalf of all holders of the contingent convertible capital securities of such series waive any past Enforcement Event that results from a breach by Banco Santander of a Performance Obligation. Holders of a majority of the aggregate Liquidation Preference of the outstanding contingent convertible capital securities of any series may not waive any past Enforcement Events that result from a Liquidation Event or non-payment of Redemption Price when due.

If an Enforcement Event has occurred and is continuing, the Trustee will have no obligation to take any action at the direction of any holders of the contingent convertible capital securities of any series, unless they have offered the Trustee security or indemnity satisfactory to the Trustee in its sole discretion. The holders of a majority in aggregate Liquidation Preference of the outstanding contingent convertible capital securities of any series shall have the right to direct the time, method and place of conducting any proceeding in the name of and on the behalf of the Trustee for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the contingent convertible capital securities of such series. However, this direction (a) must not be in conflict with any rule of law or the contingent convertible capital securities indenture and (b) must not be unjustly prejudicial to the holders of the contingent convertible capital securities of such series not taking part in the direction, in the case of either (a) or (b) as determined by the Trustee in its sole discretion. The Trustee may also take any other action, consistent with the direction, that it deems proper.

By acquiring the contingent convertible capital securities of any series, the holders and beneficial owners will acknowledge and agree that neither a Trigger Conversion, a cancellation or deemed cancellation of Distributions, (in each case, in whole or in part) in accordance with the terms of the contingent convertible capital securities indenture and the contingent convertible capital securities of such series nor the exercise of the Bail-in Power or any other resolution tools by the Relevant Resolution Authority or any action in compliance therewith will give rise to a default for the purposes of Section 315(b) (Notice of Default) and Section 315(c) (Duties of the Trustee in Case of Default) of the Trust Indenture Act.



### Limitation on Suits

No holder of contingent convertible capital securities will be entitled to proceed directly against Banco Santander, except as described below.

Subject to any further limitations provided in the relevant prospectus supplement and supplemental indenture establishing any series of contingent convertible capital securities, before a holder of the contingent convertible capital securities may bypass the Trustee and bring its own lawsuit or other formal legal action or take other steps to enforce its rights or protect its interests relating to the contingent convertible securities, the following must occur:

- The holder must have given the Trustee written notice that a continuing Enforcement Event has occurred and remains uncured.
- The holders of not less than 25% in outstanding Liquidation Preference of the contingent convertible capital securities of the relevant series must make a written request that the Trustee institute proceedings because of the Enforcement Event, and the holder must offer indemnity satisfactory to the Trustee in its sole discretion against the cost and other liabilities incurred in connection with such request.
- The Trustee must not have taken action for 60 days after receipt of the above notice and offer of security or indemnity, and the Trustee must not have received an inconsistent direction from the majority in Liquidation Preference of all outstanding contingent convertible capital securities of the relevant series during that period.

Notwithstanding any other provision of the contingent convertible capital securities indenture or the contingent convertible capital securities, the right of any holder of contingent convertible capital securities to receive payment of the Liquidation Preference of and Distributions on, the contingent convertible capital securities, on or after the due dates thereof or to institute suit for the enforcement of any such payment on or after such respective dates, will not be impaired or affected without the consent of such holder.

### Notices

All notices to holders of registered contingent convertible capital securities shall be validly given if in writing and mailed, first-class postage prepaid, to them at their respective addresses in the register maintained by the Trustee.

If and for so long as the contingent convertible capital securities of the relevant series are admitted to trading on a stock exchange, notices will also be given in accordance with any applicable requirements of such stock exchange.

### No Obligations to Beneficial Owners

None of Banco Santander, the Trustee, the paying agent or the contingent convertible capital security registrar shall have any responsibility or obligation to any beneficial owner in a global security, an agent member or other person with respect to the accuracy of the records of the depository or its nominee or of any agent member, with respect to any ownership interest in the contingent convertible capital securities or with respect to the delivery to any agent member, beneficial owner or other person (other than the depository) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such contingent convertible capital securities. All notices and communications to be given to the holders and all payments to be made to holders under the contingent convertible capital securities and the respective indenture shall be given or made only to or upon the order of the registered holders (which shall be the depository or its nominee in the case of the global security). The rights of beneficial owners in the global security shall be exercised only through the depository subject to the applicable procedures. Banco Santander, the Trustee, the paying agent and the contingent convertible capital security registrar shall be entitled to rely and shall be fully protected in relying upon information furnished by the depository with respect to its members, participants and any beneficial owners. Banco Santander, the Trustee, the paying agent and the contingent convertible capital security registrar shall be entitled to deal with the depository, and any nominee thereof, that is the registered holder of any global security for all purposes of the indenture relating to such global security (including the payment of principal, premium, if any, and interest and additional amounts, if



any, and the giving of instructions or directions by or to the owner or holder of a beneficial ownership interest in such global security) as the sole holder of such global security and shall have no obligations to the beneficial owners thereof. None of Banco Santander, the Trustee, the paying agent or the contingent convertible capital security registrar shall have any responsibility or liability for any acts or omissions of the depositary with respect to such global security, for the records of any such depositary, including records in respect of beneficial ownership interests in respect of any such global security, for any transactions between the depositary and any agent member or between or among the depositary, any such agent member and/or any holder or owner of a beneficial interest in such global security, or for any transfers of beneficial interests in any such global security.

Notwithstanding the foregoing, with respect to any global security, nothing herein shall prevent Banco Santander, the Trustee, or any agent of Banco Santander or the Trustee from giving effect to any written certification, proxy or other authorization furnished by any depositary (or its nominee), as a holder, with respect to such global security or shall impair, as between such depositary and owners of beneficial interests in such global security, the operation of customary practices governing the exercise of the rights of such depositary (or its nominee) as holder of such global security.

### **Subsequent Holders' Agreement**

Holders and beneficial owners of the contingent convertible capital securities of any series that acquire the contingent convertible capital securities of such series or beneficial interests therein in the secondary market shall be deemed to acknowledge, agree to be bound by and consent to the same provisions specified herein to the same extent as the holders and beneficial owners of the contingent convertible capital securities of such series that acquire the contingent convertible capital securities of such series upon their initial issuance, including, without limitation, with respect to the acknowledgment and agreement to be bound by and consent to the terms of the contingent convertible capital securities of such series, including in relation to Distribution cancellation, the Trigger Conversion, the Bail-in Power and the limitations on remedies specified in “—*Enforcement Events and Remedies*” above.

### **The Trustee**

The Bank of New York Mellon acting through its London Branch, One Canada Square, London E14 5AL, is the Trustee under the indenture with respect to the contingent convertible capital securities. The Trustee shall have and be subject to all the duties and responsibilities specified with respect to an indenture Trustee under the Trust Indenture Act. Subject to the provisions of the Trust Indenture Act, the Trustee is under no obligation to exercise any of the powers vested in it by the contingent convertible capital securities indenture at the request of any holder of contingent convertible capital securities, unless offered indemnity satisfactory to the Trustee in its sole discretion by the holder against the costs, expense and liabilities which might be incurred thereby. Banco Santander and certain of its subsidiaries maintain deposit accounts and conduct other banking transactions with The Bank of New York Mellon in the ordinary course of its business. The Bank of New York Mellon is also the book-entry depositary and Principal Paying Agent with respect to Banco Santander's contingent convertible capital securities. The Bank of New York Mellon is the depositary with respect to the American Depositary Shares representing certain of Banco Santander's preference shares and Banco Santander's ordinary shares.

### **Consent to Service of Process**

Under the contingent convertible capital securities indenture, Banco Santander irrevocably designates Banco Santander, S.A., New York Branch, as its authorized agent for service of process in any legal action or proceeding arising out of or relating to the contingent convertible capital securities indenture or any supplemental indentures or any contingent convertible capital securities brought in any federal or state court in The City of New York, New York and we irrevocably submit to the jurisdiction of those courts.



## DESCRIPTION OF CERTAIN PROVISIONS RELATING TO DEBT SECURITIES AND CONTINGENT CONVERTIBLE CAPITAL SECURITIES

### Form of Securities; Book-Entry System

Unless the relevant prospectus supplement states otherwise, the securities shall initially be represented by one or more global securities in registered form, without coupons attached, and will be deposited with or on behalf of one or more depositories identified in the applicable prospectus supplement, including, without limitation, DTC, Euroclear Bank, as operator of Euroclear and/or Clearstream Luxembourg, and will be registered in the name of such depository or its nominee. Unless and until the securities are exchanged in whole or in part for other securities that we issue or the global securities are exchanged for definitive securities, the global securities may not be transferred except as a whole by the depository to a nominee or a successor of the depository.

Special procedures to facilitate clearance and settlement have been established among these clearing systems to trade securities across borders in the secondary market. Where payments for securities we issue in global form will be made in U.S. dollars, these procedures can be used for cross-market transfers and the securities will be cleared and settled on a delivery against payment basis. Cross-market transfers of securities that are not in global form may be cleared and settled in accordance with other procedures that may be established among the clearing systems for these securities.

The securities may be accepted for clearance by DTC, Euroclear and Clearstream Luxembourg.

The laws of some states may require that certain investors in securities take physical delivery of their securities in definitive form. Those laws may impair the ability of investors to own interests in book-entry securities.

Neither we nor the Trustee nor any of our or its agents has any responsibility for any aspect of the actions of DTC, Clearstream Luxembourg or Euroclear or any of their direct or indirect participants. Neither we nor the Trustee nor any of our or its agents has any responsibility for any aspect of the records kept by DTC, Clearstream Luxembourg or Euroclear or any of their direct or indirect participants. Neither we nor the Trustee nor any of our or its agents supervise these systems in any way. This is also true for any other clearing system indicated in a prospectus supplement.

DTC, Clearstream Luxembourg, Euroclear and their participants perform these clearance and settlement functions under agreements they have made with one another or with their customers. Investors should be aware that DTC, Clearstream Luxembourg, Euroclear and their participants are not obligated to perform these procedures and may modify them or discontinue them at any time.

The description of the clearing systems in this section reflects our understanding of the rules and procedures of DTC, Clearstream Luxembourg and Euroclear as they are currently in effect. Those systems could change their rules and procedures at any time.

So long as the depository, or its nominee, is the holder of a global security, the depository or its nominee will be considered the sole holder of such global security for all purposes under the relevant indentures. Except as described below under “—*Issuance of Definitive Securities*”, no participant, indirect participant or other person will be entitled to have securities registered in its name, receive or be entitled to receive physical delivery of securities in definitive form or be considered the owner or holder of the securities under the relevant indentures. Each person having an ownership or other interest in securities must rely on the procedures of the depository, and, if a person is not a participant in the depository, must rely on the procedures of the participant or other securities intermediary through which that person owns its interest to exercise any rights and obligations of a holder under the applicable indentures or the securities.

### The Clearing Systems

DTC, Euroclear and Clearstream Luxembourg have advised us as follows:

*DTC.* DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial



Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act 1934, as amended (“Exchange Act”). DTC holds securities deposited with it by its participants and facilitates the settlement of transactions among its participants in such securities through electronic computerized book-entry changes in accounts of the participants, thereby eliminating the need for physical movement of securities certificates. Direct participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a direct participant, either directly or indirectly. The DTC rules applicable to its participants are on file with the SEC. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

*Euroclear.* Euroclear holds securities for its participants and clears and settles transactions between its participants through simultaneous electronic book-entry delivery against payment, thus eliminating the need for physical movement of certificates. Euroclear provides various other services, including safekeeping, administration, clearance and settlement and securities lending and borrowing, and interfaces with domestic markets in several countries. Euroclear is operated by Euroclear Bank, under contract with Euroclear plc, a U.K. corporation. Euroclear Bank conducts all operations, and all Euroclear securities clearance accounts and Euroclear cash accounts are accounts with Euroclear Bank, not Euroclear plc. Euroclear plc establishes policy for Euroclear on behalf of Euroclear participants. Euroclear participants include banks (including central banks), securities brokers and dealers and other professional financial intermediaries and may include any underwriters for the securities. Indirect access to Euroclear is also available to other firms that clear through or maintain a custodial relationship with a Euroclear participant, either directly or indirectly. Euroclear is an indirect participant in DTC. Securities clearance accounts and cash accounts with Euroclear are governed by the Terms and Conditions Governing Use of Euroclear and the related Operating Procedures of the Euroclear System (collectively, the “Euroclear Terms and Conditions”) and applicable law. The Euroclear Terms and Conditions govern transfers of securities and cash within Euroclear, withdrawals of securities and cash from Euroclear, and receipts of payments with respect to securities in Euroclear.

*Clearstream Luxembourg.* Clearstream Luxembourg is incorporated under the laws of The Grand Duchy of Luxembourg as a *société anonyme* and is subject to regulation by the Luxembourg Commission for the Supervision of the Financial Sector (Commission de Surveillance du Secteur Financier). Clearstream Luxembourg is owned by Deutsche Börse AG, a publicly traded company. Clearstream Luxembourg holds securities for its participants and facilitates the clearance and settlement of securities transactions among its participants through electronic book-entry changes in accounts of its participants, thereby eliminating the need for physical movement of certificates. Clearstream Luxembourg provides other services to its participants, including safekeeping, administration, clearance and settlement of internationally traded securities and securities lending and borrowing. Clearstream Luxembourg interfaces with domestic markets in several countries. Clearstream Luxembourg’s customers include worldwide securities brokers and dealers, banks, trust companies and clearing corporations and may include professional financial intermediaries. Its U.S. customers are limited to securities brokers, dealers and banks. Indirect access to the Clearstream Luxembourg system is also available to others that clear through Clearstream Luxembourg customers or that have custodial relationships with its customers, such as banks, brokers, dealers and trust companies. Clearstream Luxembourg is an indirect participant in DTC. Clearstream Luxembourg has established an electronic bridge with Euroclear to facilitate settlement of trades between Clearstream Luxembourg and Euroclear. Distributions with respect to the securities held beneficially through Clearstream Luxembourg are credited to cash accounts of Clearstream Luxembourg customers in accordance with its rules and procedures, to the extent received by Clearstream Luxembourg.

#### *Other Clearing Systems*

We may choose any other clearing system for a particular series of securities. The clearance and settlement procedures for the clearing system we choose will be described in the applicable prospectus supplement.

#### **Payments on the Global Security**

Payments of any amounts in respect of any global securities will be made by the Principal Paying Agent to the depository. Payments will be made to beneficial owners of securities in accordance with the rules and procedures of the depository or its direct and indirect participants, as applicable. Neither we nor the Trustee nor any of our agents



will have any responsibility or liability for any aspect of the records of any securities intermediary in the chain of intermediaries between the depository and any beneficial owner of an interest in a global security, or the failure of the depository or any intermediary to pass through to any beneficial owner any payments that we make to the depository.

### **Primary Distribution**

The distribution of securities will be cleared through one or more of the clearing systems that we have described above or any other clearing system that is specified in the applicable prospectus supplement. Payment for securities will be made on a delivery versus payment or free delivery basis.

Clearance and settlement procedures may vary from one series of securities to another according to the currency that is chosen for the specific series of securities. Customary clearance and settlement procedures are described below.

We will submit applications to the relevant system or systems for the securities to be accepted for clearance. The clearance numbers that are applicable to each clearance system will be specified in the applicable prospectus supplement.

### **Clearance and Settlement Procedures—DTC**

DTC participants that hold securities through DTC on behalf of investors will follow the settlement practices applicable to United States corporate debt obligations in DTC's Same-Day Funds Settlement System.

Securities will be credited to the securities custody accounts of these DTC participants against payment in same-day funds, for payments in U.S. dollars, on the settlement date. For payments in a currency other than U.S. dollars, securities will be credited free of payment on the settlement date.

### **Clearance and Settlement Procedures—Euroclear and Clearstream Luxembourg**

We understand that investors that hold securities through Euroclear or Clearstream Luxembourg accounts will follow the settlement procedures that are applicable to conventional Eurobonds in registered form for securities.

Securities will be credited to the securities custody accounts of Euroclear and Clearstream Luxembourg participants on the business day following the settlement date, for value on the settlement date. They will be credited either free of payment or against payment for value on the settlement date.

### **Secondary Market Trading**

#### *Trading Between DTC Participants*

Secondary market trading between DTC participants will occur in the ordinary way in accordance with DTC's rules. Secondary market trading will be settled using procedures applicable to United States corporate debt obligations in DTC's Same-Day Funds Settlement System for securities.

If payment is made in U.S. dollars, settlement will be in same-day funds. If payment is made in a currency other than U.S. dollars, settlement will be free of payment. If payment is made other than in U.S. dollars, separate payment arrangements outside of the DTC system must be made between the DTC participants involved.

#### *Trading Between Euroclear and/or Clearstream Luxembourg Participants*

We understand that secondary market trading between Euroclear and/or Clearstream Luxembourg participants will occur in the ordinary way following the applicable rules and operating procedures of Euroclear and Clearstream Luxembourg. Secondary market trading will be settled using procedures applicable to conventional Eurobonds in registered form for securities.

#### *Trading Between a DTC Seller and a Euroclear or Clearstream Luxembourg Purchaser*

A purchaser of securities that are held in the account of a DTC participant must send instructions to Euroclear or Clearstream Luxembourg at least one business day prior to settlement. The instructions will provide for the



transfer of the securities from the selling DTC participant's account to the account of the purchasing Euroclear or Clearstream Luxembourg participant. Euroclear or Clearstream Luxembourg, as the case may be, will then instruct the common depository for Euroclear and Clearstream Luxembourg to receive the securities either against payment or free of payment.

The interests in the securities will be credited to the respective clearing system. The clearing system will then credit the account of the participant, following its usual procedures. Credit for the securities will appear on the next day, European time. Cash debit will be back-valued to, and the interest or Distributions, as applicable, on the securities will accrue from, the value date, which would be the preceding day, when settlement occurs in New York. If the trade fails and settlement is not completed on the intended date, the Euroclear or Clearstream Luxembourg cash debit will be valued as of the actual settlement date instead.

Euroclear participants or Clearstream Luxembourg participants will need the funds necessary to process same-day funds settlement. The most direct means of doing this is to pre-position funds for settlement, either from cash or from existing lines of credit, as for any settlement occurring within Euroclear or Clearstream Luxembourg. Under this approach, participants may take on credit exposure to Euroclear or Clearstream Luxembourg until the securities are credited to their accounts one business day later.

As an alternative, if Euroclear or Clearstream Luxembourg has extended a line of credit to them, participants can choose not to pre-position funds and will instead allow that credit line to be drawn upon to finance settlement. Under this procedure, Euroclear participants or Clearstream Luxembourg participants purchasing securities would incur overdraft charges for one business day (assuming they cleared the overdraft as soon as the securities were credited to their accounts). However, any interest or Distributions, as applicable, on the securities would accrue from the value date. Therefore, in many cases, the investment income on securities that is earned during that one-business day period may substantially reduce or offset the amount of the overdraft charges. This result will, however, depend on each participant's particular cost of funds.

Because the settlement will take place during New York business hours, DTC participants will use their usual procedures to deliver securities to the depository on behalf of Euroclear participants or Clearstream Luxembourg participants. The sale proceeds will be available to the DTC seller on the settlement date. For the DTC participants, then, a cross-market transaction will settle no differently than a trade between two DTC participants.

### Special Timing Considerations

Investors should be aware that they will only be able to make and receive deliveries, payments and other communications involving the securities through Clearstream Luxembourg and Euroclear on days when those systems are open for business. Those systems may not be open for business on days when banks, brokers and other institutions are open for business in the United States.

In addition, because of time-zone differences, there may be problems with completing transactions involving Clearstream Luxembourg and Euroclear on the same business day as in the United States. U.S. investors who wish to transfer their interests in the securities or to receive or make a payment or delivery of the securities on a particular day, may find that the transactions will not be performed until the next business day in Luxembourg or Brussels, depending on whether Clearstream Luxembourg or Euroclear is used.

### Issuance of Definitive Securities

So long as the depository holds the global securities of a particular series of securities such global securities will not be exchangeable for definitive securities of that series unless:

- the depository notifies the Trustee that it is unwilling or unable to continue to act as depository for the securities of such series, or, in the case of DTC, the depository ceases to be a clearing agency registered under the Exchange Act;
- Banco Santander is liquidated and we fail to make a payment on the securities when due, other than in connection with a cancelled Distribution, Trigger Conversion or any exercise of Bail-in Power; or
- at any time Banco Santander determines in its option and in its sole discretion that the global securities of a particular series of securities should be exchanged for definitive securities of that series in registered form.





Each person having an ownership or other interest in a security must rely exclusively on the rules or procedures of the depository as the case may be, and any agreement with any direct or indirect participant of the depository, including Euroclear or Clearstream Luxembourg and their participants, as applicable, or any other securities intermediary through which that person holds its interest, to receive or direct the delivery of possession of any definitive security. The indentures permit Banco Santander to determine at any time and in their sole discretion that securities shall no longer be represented by global securities. DTC has advised Banco Santander that, under its current practices, it would notify its participants of Banco Santander's request, but will only withdraw beneficial interests from the global securities at the request of each DTC participant. Banco Santander would issue definitive certificates in exchange for any such beneficial interests withdrawn.

Unless otherwise specified in the relevant prospectus supplement, definitive securities will be issued in registered form only. To the extent permitted by law, Banco Santander, the Trustee and any paying agent shall be entitled to treat the person in whose name any definitive security is registered as its absolute owner.

Payments in respect of each series of definitive securities will be made to the person in whose name such definitive securities are registered as it appears in the register for that series securities. Payments will be made in respect of the securities by check drawn on a bank in New York or London or, if the holder requests, by transfer to the holder's account in New York or London. Definitive securities should be presented to the paying agent for redemption.

If Banco Santander issues definitive securities of a particular series in exchange for a particular global security, the depository, as holder of that global security, will surrender it against receipt of the definitive securities, cancel the book-entry securities of that series, and distribute the definitive securities of that series to the persons and in the amounts that the depository specifies pursuant to the internal procedures of such depository.

If definitive securities are issued in the limited circumstances described above, those securities may be transferred in whole or in part in denominations of any whole number of securities upon surrender of the definitive securities certificates together with the form of transfer endorsed on it, duly completed and executed at the specified office of a paying agent. If only part of a securities certificate is transferred, a new securities certificate representing the balance not transferred will be issued to the transferor within three business days after the paying agent receives the certificate. The new certificate representing the balance will be delivered to the transferor by uninsured post at the risk of the transferor, to the address of the transferor appearing in the records of the paying agent. The new certificate representing the securities that were transferred will be sent to the transferee within three business days after the paying agent receives the certificate transferred, by uninsured post at the risk of the holder entitled to the securities represented by the certificate, to the address specified in the form of transfer.



200FX&=&eNJDeDsP

**BANCO SANTANDER, S.A**

Donnelley Financial

VDI-W7-PR3-0204  
12.1.14

ADG kothp0dc

02-Apr-2017 16:45 EST

**353001 TX 110 8\***

**FORM F-3**

NYC

HTM ESS 0C

Page 1 of 1

### DESCRIPTION OF ORDINARY SHARES

Banco Santander refers to “Item 10. Additional Information — B. Memorandum and articles of association” in Banco Santander’s Annual Report on Form 20-F for the year ended December 31, 2016 for a summary of the material terms of Banco Santander’s By-laws and applicable Spanish corporate law in effect as of the date of this prospectus regarding Banco Santander’s ordinary shares and the holders thereof. Such summary describes Banco Santander’s By-laws which were approved at the shareholders’ meeting held on June 21, 2008, filed with the office of the Commercial Registry of Santander on August 11, 2008 and became effective immediately thereafter. Subsequently, several articles have been amended and sub-sections 1 and 2 of Article 5 of Banco Santander’s Bylaws have been updated several times to show the current share capital and the number of shares outstanding. The most recent of such amendments corresponds to the one required by the share capital increase carried out on November 7, 2016 and filed with the office of the Mercantile Registry on the following day. This summary may not contain all of the information that is important to prospective investors. To understand them fully, prospective investors should read Banco Santander’s By-laws, a copy of which has been included in Exhibit 1.1 and Exhibit 1.2 of Banco Santander’s Annual Report on Form 20-F for the year ended December 31, 2016.

As of March 31, 2017, Banco Santander’s paid in share capital was €7,291,170,350.50 represented by a single class of 14,582,340,701 ordinary shares having a par value of fifty euro cents (€ 0.50) each, represented by means of book entries.



## DESCRIPTION OF AMERICAN DEPOSITARY SHARES

### American Depositary Shares

The Bank of New York Mellon, as depositary, will register and deliver American Depositary Shares, also referred to as ADSs. Each ADS will represent one (1) ordinary share (or a right to receive one (1) ordinary share) deposited with Banco Santander, as custodian for the depositary in Spain. Each ADS will also represent any other securities, cash or other property which may be held by the depositary. The depositary's office at which the ADSs will be administered is located at 101 Barclay Street, New York, New York 10286. The Bank of New York Mellon's principal executive office is located at 225 Liberty Street, New York, New York 10286.

You may hold ADSs either (A) directly (i) by having an American Depositary Receipt, also referred to as an ADR, which is a certificate evidencing a specific number of ADSs, registered in your name, or (ii) by having uncertificated ADSs registered in your name, or (B) indirectly by holding a security entitlement in ADSs through your broker or other financial institution that is a direct or indirect participant in The Depository Trust Company, also called DTC. If you hold ADSs directly, you are a registered ADS holder, also referred to as an ADS holder. This description assumes you are an ADS holder. If you hold the ADSs indirectly, you must rely on the procedures of your broker or other financial institution to assert the rights of ADS holders described in this section. You should consult with your broker or financial institution to find out what those procedures are.

Registered holders of uncertificated ADSs will receive statements from the depositary confirming their holdings.

As an ADS holder, we will not treat you as one of our shareholders and you will not have shareholder rights. Spanish law governs shareholder rights. The depositary will be the holder of the ordinary shares underlying your ADSs. As a registered holder of ADSs, you will have ADS holder rights. A deposit agreement among us, the depositary, ADS holders and all other persons indirectly or beneficially holding ADSs sets out ADS holder rights as well as the rights and obligations of the depositary. New York law governs the deposit agreement and the ADSs.

The following is a summary of the material provisions of the deposit agreement. For more complete information, you should read the entire deposit agreement and the form of ADR. See "Incorporation of Documents by Reference."

### Dividends and Other Distributions

#### *How will you receive dividends and other distributions on the ordinary shares?*

The depositary has agreed to pay or distribute to ADS holders the cash dividends or other distributions it or the custodian receives on ordinary shares or other deposited securities, upon payment or deduction of its fees and expenses. You will receive these distributions in proportion to the number of ordinary shares your ADSs represent. Before making a distribution, any withholding taxes, or other governmental charges that must be paid will be deducted.

*Cash.* The depositary will convert any cash dividend or other cash distribution we pay on the ordinary shares into U.S. dollars if it can do so on a reasonable basis and can transfer the U.S. dollars to the United States. If that is not possible or if any government approval is needed and cannot be obtained, the deposit agreement allows the depositary to distribute the foreign currency only to those ADS holders to whom it is possible to do so. It will hold the foreign currency it cannot convert for the account of the ADS holders who have not been paid. It will not invest the foreign currency and it will not be liable for any interest.

The depositary will distribute only whole U.S. dollars and cents and will round fractional cents to the nearest whole cent. *If the exchange rates fluctuate during a time when the depositary cannot convert the foreign currency, you may lose some of the value of the distribution.*

*Ordinary shares.* The depositary may distribute additional ADSs representing any ordinary shares we distribute as a dividend or free distribution. The depositary will only distribute whole ADSs. It will sell ordinary shares which would require it to deliver a fraction of an ADS (or ADSs representing those ordinary shares) and distribute the net proceeds in the same way as it does with cash. If the depositary does not distribute additional ADSs, the outstanding ADSs will also represent the new ordinary shares. The depositary may sell a portion of the distributed ordinary shares (or ADSs representing those ordinary shares) sufficient to pay its fees and expenses in connection with that distribution.



*Rights to purchase additional ordinary shares.* If we offer holders of our securities any rights to subscribe for additional ordinary shares or any other rights, the depositary may (i) exercise those rights on behalf of ADS holders, (ii) distribute those rights to ADS holders or (iii) sell those rights and distribute the net proceeds to ADS holders, in each case after deduction or upon payment of its fees and expenses. To the extent the depositary does not do any of those things, it will allow the rights to lapse. In that case, you will receive no value for them. The depositary will exercise or distribute rights only if we ask it to and provide satisfactory assurances to the depositary that it is legal to do so. If the depositary will exercise rights, it will purchase the securities to which the rights relate and distribute those securities or, in the case of ordinary shares, new ADSs representing the new ordinary shares, to subscribing ADS holders, but only if ADS holders have paid the exercise price to the depositary. U.S. securities laws may restrict the ability of the depositary to distribute rights or ADSs or other securities issued on exercise of rights to all or certain ADS holders, and the securities distributed may be subject to restrictions on transfer.

*Other distributions.* The depositary will send to ADS holders anything else we distribute on deposited securities by any means it thinks is legal, fair and practical. If it cannot make the distribution in that way, the depositary has a choice. It may decide to sell what we distributed and distribute the net proceeds, in the same way as it does with cash. Or, it may decide to hold what we distributed, in which case ADSs will also represent the newly distributed property. However, the depositary is not required to distribute any securities (other than ADSs) to ADS holders unless it receives satisfactory evidence from us that it is legal to make that distribution. The depositary may sell a portion of the distributed securities or property sufficient to pay its fees and expenses in connection with that distribution. U.S. securities laws may restrict the ability of the depositary to distribute securities to all or certain ADS holders, and the securities distributed may be subject to restrictions on transfer.

The depositary is not responsible if it decides that it is unlawful or impractical to make a distribution available to any ADS holders. We have no obligation to register ADSs, ordinary shares, rights or other securities under the Securities Act. We also have no obligation to take any other action to permit the distribution of ADSs, ordinary shares, rights or anything else to ADS holders. This means that you may not receive the distributions we make on our ordinary shares or any value for them if it is illegal or impractical for us to make them available to you.

## **Deposit, Withdrawal and Cancellation**

### ***How are ADSs issued?***

The depositary will deliver ADSs if you or your broker deposits ordinary shares or evidence of rights to receive ordinary shares with the custodian with any appropriate documentation that the custodian requires. Upon payment of its fees and expenses and of any taxes or charges, such as stamp taxes or stock transfer taxes or fees, the depositary will register the appropriate number of ADSs in the names you request and will deliver the ADSs to or upon the order of the person or persons that made the deposit.

### ***How can ADS holders withdraw the deposited securities?***

You may surrender your ADSs for the purpose of withdrawal at the depositary's office. Upon payment of its fees and expenses and of any taxes or charges, such as stamp taxes or stock transfer taxes or fees, the depositary will deliver the ordinary shares and any other deposited securities underlying the ADSs to the ADS holder or a person the ADS holder designates at the office of the custodian. Or, at your request, risk and expense, the depositary will deliver the deposited securities at its office, or other requested locations. The depositary may charge you a fee and its expenses for instructing the custodian regarding delivery of deposited securities.

### ***How do ADS holders interchange between certificated ADSs and uncertificated ADSs?***

You may surrender your American Depositary Receipt, or ADR, to the depositary for the purpose of exchanging your ADR for uncertificated ADSs. The depositary will cancel that ADR and will send to the ADS holder a statement confirming that the ADS holder is the registered holder of uncertificated ADSs. Alternatively, upon receipt by the depositary of a proper instruction from a registered holder of uncertificated ADSs requesting the exchange of uncertificated ADSs for certificated ADSs, the depositary will execute and deliver to the ADS holder an ADR evidencing those ADSs.



**Voting Rights**

*How do you vote?*

ADS holders may instruct the depositary how to vote the number of deposited ordinary shares their ADSs represent. If we request the depositary to solicit your voting instructions (and we are not required to do so), the depositary will notify you of a shareholders' meeting and send or make voting materials available to you. Those materials will describe the matters to be voted on and explain how ADS holders may instruct the depositary how to vote. For instructions to be valid, they must reach the depositary by a date set by the depositary. The depositary will try, as far as practical, subject to any applicable provision of Spanish law and of our bylaws or similar documents, to vote or to have its agents vote the ordinary shares, shares or other deposited securities as instructed by ADS holders. If we do not request the depositary to solicit your voting instructions, you can still send voting instructions, and, in that case, the depositary may try to vote as you instruct, but it is not required to do so.

Except by instructing the depositary as described above, you will not be able to exercise voting rights unless you surrender your ADSs and withdraw the ordinary shares. However, you may not know about the meeting enough in advance to withdraw the ordinary shares. In any event, the depositary will not exercise any discretion in voting deposited securities and it will only vote or attempt to vote as instructed or as described in the following sentence. If we asked the depositary to solicit your instructions at least 30 days before the meeting date but the depositary does not receive voting instructions from you by the specified date, it will consider you to have authorized and directed it to give a discretionary proxy to a person designated by us to vote the number of deposited securities represented by your ADSs. The depositary will give a discretionary proxy in those circumstances to vote on all questions to be voted upon unless we notify the depositary that:

- we do not wish to receive a discretionary proxy;
- there is substantial opposition from our shareholders to the manner in which such deposited securities would be voted with respect to the particular question; or
- the particular question would have a material and adverse impact on the rights of our shareholders.

We cannot assure you that you will receive the voting materials in time to ensure that you can instruct the depositary to vote your ordinary shares. In addition, the depositary and its agents are not responsible for failing to carry out voting instructions or for the manner of carrying out voting instructions. This means that you may not be able to exercise your voting rights and there may be nothing you can do if your ordinary shares are not voted as you requested.

If we request the depositary to act, we agree to give the depositary notice of any such meeting and details concerning the matters to be voted upon as far in advance of the meeting date as practicable.

**Payment of Taxes**

You will be responsible for any taxes or other governmental charges payable on your ADSs or on the deposited securities represented by any of your ADSs. The depositary may refuse to register any transfer of your ADSs or allow you to withdraw the deposited securities represented by your ADSs until such taxes or other charges are paid. It may apply payments owed to you or sell deposited securities represented by your ADSs to pay any taxes owed and you will remain liable for any deficiency. If the depositary sells deposited securities, it will, if appropriate, reduce the number of ADSs to reflect the sale and pay to ADS holders any proceeds, or send to ADS holders any property, remaining after it has paid the taxes.

**Tender and Exchange Offers; Redemption, Replacement or Cancellation of Deposited Securities**

The depositary will not tender deposited securities in any voluntary tender or exchange offer unless instructed to do so by an ADS holder surrendering ADSs and subject to any conditions or procedures the depositary may establish.

If deposited securities are redeemed for cash in a transaction that is mandatory for the depositary as a holder of deposited securities, the depositary will call for surrender of a corresponding number of ADSs and distribute the net redemption money to the holders of called ADSs upon surrender of those ADSs.



If there is any change in the deposited securities such as a sub-division, combination or other reclassification, or any merger, consolidation, recapitalization or reorganization affecting the issuer of deposited securities in which the depository receives new securities in exchange for or in lieu of the old deposited securities, the depository will hold those replacement securities as deposited securities under the deposit agreement. However, if the depository decides it would not be lawful and to hold the replacement securities because those securities could not be distributed to ADS holders or for any other reason, the depository may instead sell the replacement securities and distribute the net proceeds upon surrender of the ADSs.

If there is a replacement of the deposited securities and the depository will continue to hold the replacement securities, the depository may distribute new ADSs representing the new deposited securities or ask you to surrender your outstanding ADRs in exchange for new ADRs identifying the new deposited securities.

If there are no deposited securities underlying ADSs, including if the deposited securities are cancelled, or if the deposited securities underlying ADSs have become apparently worthless, the depository may call for surrender of those ADSs or cancel those ADSs upon notice to the ADS holders.

## **Amendment and Termination**

### ***How may the deposit agreement be amended?***

We may agree with the depository to amend the deposit agreement and the ADRs without your consent for any reason. If an amendment adds or increases fees or charges, except for taxes and other governmental charges or expenses of the depository for registration fees, facsimile costs, delivery charges or similar items, or prejudices a substantial right of ADS holders, it will not become effective for outstanding ADSs until 30 days after the depository notifies ADS holders of the amendment. At the time an amendment becomes effective, you are considered, by continuing to hold your ADSs, to agree to the amendment and to be bound by the ADRs and the deposit agreement as amended.

### ***How may the deposit agreement be terminated?***

The depository will initiate termination of the deposit agreement if we instruct it to do so. The depository may initiate termination of the deposit agreement if

- 90 days have passed since the depository told us it wants to resign but a successor depository has not been appointed and accepted its appointment;
- we delist our ordinary shares from an exchange on which they were listed and do not list the ordinary shares on another exchange;
- we enter insolvency proceedings or information becomes publicly available indicating that unsecured claims against us are not expected to be paid;
- all or substantially all the value of the deposited securities has been distributed either in cash or in the form of securities;
- there are no deposited securities underlying the ADSs or the underlying deposited securities have become apparently worthless; or
- there has been a replacement of deposited securities.

If the deposit agreement will terminate, the depository will notify ADS holders at least 120 days before the termination date. At any time after the termination date, the depository may sell the deposited securities. After that, the depository will hold the money it received on the sale, as well as any other cash it is holding under the deposit agreement, unsegregated and without liability for interest, for the *pro rata* benefit of the ADS holders that have not surrendered their ADSs. Normally, the depository will sell as soon as practicable after the termination date.

After the termination date and before the depository sells, ADS holders can still surrender their ADSs and receive delivery of deposited securities, except that the depository may refuse to accept a surrender for the purpose of withdrawing deposited securities if it would interfere with the selling process. The depository may refuse to



accept a surrender for the purpose of withdrawing sale proceeds until all the deposited securities have been sold. The depository will continue to collect distributions on deposited securities, but, after the termination date, the depository is not required to register any transfer of ADSs or distribute any dividends or other distributions on deposited securities to the ADSs holder (until they surrender their ADSs) or give any notices or perform any other duties under the deposit agreement except as described in this paragraph.

### **Limitations on Obligations and Liability**

#### ***Limits on our Obligations and the Obligations of the Depository; Limits on Liability to Holders of ADSs***

The deposit agreement expressly limits our obligations and the obligations of the depository. It also limits our liability and the liability of the depository. We and the depository:

- are only obligated to take the actions specifically set forth in the deposit agreement without negligence or bad faith;
- are not liable if we are or it is prevented or delayed by law or circumstances beyond our or its control from performing our or its obligations under the deposit agreement;
- are not liable if we or it exercises discretion permitted under the deposit agreement;
- are not liable for the inability of any holder of ADSs to benefit from any distribution on deposited securities that is not made available to holders of ADSs under the terms of the deposit agreement, or for any special, consequential or punitive damages for any breach of the terms of the deposit agreement;
- have no obligation to become involved in a lawsuit or other proceeding related to the ADSs or the deposit agreement on your behalf or on behalf of any other person;
- may rely upon any documents we believe or it believes in good faith to be genuine and to have been signed or presented by the proper person.

In the deposit agreement, we and the depository agree to indemnify each other under certain circumstances.

#### ***Requirements for Depository Actions***

Before the depository will deliver or register a transfer of ADSs, make a distribution on ADSs, or permit withdrawal of ordinary shares, the depository may require:

- payment of stock transfer or other taxes or other governmental charges and transfer or registration fees charged by third parties for the transfer of any ordinary shares or other deposited securities;
- satisfactory proof of the identity and genuineness of any signature or other information it deems necessary; and
- compliance with regulations it may establish, from time to time, consistent with the deposit agreement, including presentation of transfer documents.

The depository may refuse to deliver ADSs or register transfers of ADSs when the transfer books of the depository or our transfer books are closed or at any time if the depository or we think it advisable to do so.

#### ***Your Right to Receive the Ordinary shares Underlying your ADSs***

ADS holders have the right to cancel their ADSs and withdraw the underlying ordinary shares at any time except:

- when temporary delays arise because: (i) the depository has closed its transfer books or we have closed our transfer books; (ii) the transfer of ordinary shares is blocked to permit voting at a shareholders' meeting; or (iii) we are paying a dividend on our ordinary shares;



200FX&=&eN3mbK0Lp

- when you owe money to pay fees, taxes and similar charges; or
- when it is necessary to prohibit withdrawals in order to comply with any laws or governmental regulations that apply to ADSs or to the withdrawal of ordinary shares or other deposited securities.

This right of withdrawal may not be limited by any other provision of the deposit agreement.

***Pre-release of ADSs***

The deposit agreement permits the depository to deliver ADSs before deposit of the underlying ordinary shares. This is called a pre-release of the ADSs. The depository may also deliver ordinary shares upon cancellation of pre-released ADSs (even if the ADSs are canceled before the pre-release transaction has been closed out). A pre-release is closed out as soon as the underlying ordinary shares are delivered to the depository. The depository may receive ADSs instead of ordinary shares to close out a pre-release. The depository may pre-release ADSs only under certain conditions, including: (i) before or at the time of the pre-release, the person to whom the pre-release is being made represents to the depository in writing that it or its customer owns the ordinary shares or ADSs to be deposited, assigns all beneficial rights, title and interest in such ordinary shares to the depository and will not take any action that is inconsistent with the transfer of such rights, title and interest; (ii) the pre-release is fully collateralized with cash or other collateral that the depository considers appropriate; and (iii) the depository must be able to close out the pre-release on not more than five business days' notice. In addition, the depository will limit the number of ADSs that may be outstanding at any time as a result of pre-release, although the depository may disregard the limit from time to time, if it thinks it is appropriate to do so.

***Direct Registration System***

In the deposit agreement, all parties to the deposit agreement acknowledge that the Direct Registration System, also referred to as DRS, and Profile Modification System, also referred to as Profile, will apply to the ADSs. DRS is a system administered by DTC that facilitates interchange between registered holding of uncertificated ADSs and holding of security entitlements in ADSs through DTC and a DTC participant. Profile is feature of DRS that allows a DTC participant, claiming to act on behalf of a registered holder of uncertificated ADSs, to direct the depository to register a transfer of those ADSs to DTC or its nominee and to deliver those ADSs to the DTC account of that DTC participant without receipt by the depository of prior authorization from the ADS holder to register that transfer.

In connection with and in accordance with the arrangements and procedures relating to DRS/Profile, the parties to the deposit agreement understand that the depository will not determine whether the DTC participant that is claiming to be acting on behalf of an ADS holder in requesting registration of transfer and delivery as described in the paragraph above has the actual authority to act on behalf of the ADS holder (notwithstanding any requirements under the Uniform Commercial Code). In the deposit agreement, the parties agree that the depository's reliance on and compliance with instructions received by the depository through the DRS/Profile system and in accordance with the deposit agreement will not constitute negligence or bad faith on the part of the depository.

***Shareholder Communications; Inspection of Register of Holders of ADSs***

The depository will make available for your inspection at its office all communications that it receives from us as a holder of deposited securities that we make generally available to holders of deposited securities. The depository will send you copies of those communications or otherwise make those communications available to you if we ask it to. You have a right to inspect the register of holders of ADSs, but not for the purpose of contacting those holders about a matter unrelated to our business or the ADSs.



**TAXATION****Spanish Taxation**

*The following is a general description of material Spanish tax considerations relating to the holders who are the beneficial owners of the securities (the “holders”, the “investors”, the “purchasers” or the “shareholders”, as the case may be). It does not purport to be a complete analysis of all tax considerations relating to these securities.*

*Prospective purchasers of securities should consult their own tax advisors as to the consequences under the tax laws of the country of which they are resident for tax purposes and the tax laws of Spain of acquiring, holding and disposing of securities and receiving any payments under the securities. The information contained within this section is based upon the law as in effect on the date of this document and is subject to any change in law that may take effect after such date (which may have retroactive effects).*

*This analysis is a general description of the tax treatment under the currently in force Spanish legislation applicable in the common territory of Spain and, hence, it does not describe the regional tax regimes in the Historical Territories of the Basque Country and the Community of Navarre or the provisions passed by Autonomous Communities which may apply to investors for certain taxes.*

*In addition, investors should note that the appointment by an investor in securities or any person through which an investor holds securities, of a custodian, collection agent or similar person in relation to such securities in any jurisdiction may have tax implications. Investors should consult their own tax advisors in relation to the tax consequences for them of any such appointment.*

**Introduction**

This information has been prepared in accordance with the following Spanish tax legislation in force at the date of this document:

- a) of general application, First Additional Provision of Law 10/2014, of June 26, on organization, supervision and solvency of credit institutions (“Law 10/2014”) and Royal Decree 1065/2007, of July 27, 2007, approving the General Regulations of the tax inspection and management procedures and developing the common rules of the procedures to apply taxes, as amended by Royal Decree 1145/2011, of July 29, 2011 (“Royal Decree 1065/2007”);
- b) for individuals resident for tax purposes in Spain who are subject to the Individual Income Tax (“IIT”), Law 35/2006 of 28 November, on the IIT and on the Partial Amendment of the Corporate Income Tax Law, the Non-Residents Income Tax Law and the Net Wealth Tax Law, as amended, and Royal Decree 439/2007, of 30 March, promulgating the IIT Regulations, along with Law 19/1991, of 6 June, on Net Wealth Tax, as amended, and Law 29/1987, of 18 December on the Inheritance and Gift Tax;
- c) for legal entities resident for tax purposes in Spain which are subject to the Corporate Income Tax (“CIT”), Law 27/2014, of 27 November, on Corporate Income Tax and Royal Decree 634/2015, of 10 July, promulgating the CIT Regulations; and
- d) for individuals and entities who are not resident for tax purposes in Spain that are subject to the Non-Resident Income Tax (“NRIT”), Royal Legislative Decree 5/2004, of 5 March, promulgating the Consolidated Text of the NRIT Law, as amended, and Royal Decree 1776/2004, of 30 July promulgating the NRIT Regulations, along with Law 19/1991, of 6 June, on Net Wealth Tax as amended, and Law 29/1987, of 18 December, on the Inheritance and Gift Tax.

**A. TAXATION IN SPAIN OF DEBT SECURITIES****1. Individuals with Tax Residency in Spain****1.1 Individual Income Tax (Impuesto sobre la Renta de las Personas Físicas)**

Both interest payments periodically received and income derived from the transfer, redemption or repayment of the debt securities constitute a return on investment obtained from the transfer of a person’s own capital to third



parties in accordance with the provisions of Section 25 of the IIT Law, and therefore must be included in the investor's IIT savings taxable base pursuant to the provisions of the aforementioned law and generally taxed at a flat rate of 19% on the first EUR 6,000; 21% from EUR 6,000.01 up to EUR 50,000 and 23% for any amount in excess of EUR 50,000.

Income from the transfer of the debt securities must be computed as the difference between the amounts obtained in the transfer, redemption or reimbursement of the debt securities and their acquisition or subscription value. Costs and expenses effectively borne on the acquisition and/or disposal of the debt securities must be taken into account, insofar as adequately evidenced, in calculating the income. When calculating the net income, expenses related to the management and deposit of the debt securities will be deductible, excluding those pertaining to discretionary or individual portfolio management.

According to Section 44.5 of Royal Decree 1065/2007 ("Section 44.5") (which applies to preferred securities and debt instruments issued under Law 10/2014 and which have been originally registered with entities that manage clearing systems located outside Spain, provided that these entities are recognized by Spanish law or by the law of another Organization for Economic Cooperation and Development ("OECD") country such as DTC, Euroclear and/or Clearstream, Luxembourg)), Banco Santander will pay interest without withholding to individual holders who are resident for tax purposes in Spain provided that the information regarding the debt securities required by Exhibit 99.1 is submitted by the relevant paying agent, notwithstanding the information obligations of Banco Santander under general provisions of Spanish tax legislation. In addition, income obtained upon redemption or repayment by Banco Santander of the debt securities may also be paid without withholding on account of IIT under the same conditions.

If those requirements are not met, such interest and income shall be subject to withholding on account of IIT at the then-applicable rate (currently set at 19%).

However, income derived from the transfer of the debt securities may be subject to withholding tax on account of IIT at the then-applicable general rate (currently set at 19%). Furthermore, in the case of debt securities held by Spanish resident individuals and deposited with a Spanish resident entity acting as depositary or custodian, payments of interest or income obtained upon redemption or repayment by Banco Santander of the debt securities may be subject to withholding tax on account of IIT at the then-applicable general rate (currently set at 19%) which will be made by the depositary or custodian. Any amounts withheld on account of IIT may be credited against the final IIT liability for the relevant tax year.

### **1.2 Net Wealth Tax (*Impuesto sobre el Patrimonio*)**

Individuals with tax residency in Spain are subject to Net Wealth Tax to the extent that their net worth on the last day of any given year exceeds EUR 700,000. Therefore, they should take into account the value of the debt securities which they hold as at 31 December of each year. The current applicable rates range between 0.2% and 2.5%. The Autonomous Communities may have different provisions on this respect.

In accordance with Article 4 of the Royal Decree-Law 3/2016, of 2 December, adopting tax measures aimed at the consolidation of public finances and other urgent social security measures (*Real Decreto-ley 3/2016, de 2 de diciembre, por el que se adoptan medidas en el ámbito tributario dirigidas a la consolidación de las finanzas públicas y otras medidas urgentes en materia social*) ("RDL 3/2016"), as from year 2018, a full exemption on Spanish Net Wealth Tax would apply (*bonificación del 100%*), and therefore from year 2018 and onwards, individuals resident in Spain will be released from formal and filing obligations in relation to this Spanish Net Wealth Tax, unless the application of this full exemption is postponed.

### **1.3 Inheritance and Gift Tax (*Impuesto sobre Sucesiones y Donaciones*)**

Individuals resident in Spain for tax purposes who acquire ownership or other rights over any debt securities by inheritance, gift or legacy will be subject to the Spanish Inheritance and Gift Tax in accordance with the applicable Spanish regional and State rules. The applicable tax rates currently range between 7.65% and 81.6% depending on relevant factors (such as the amount of the gift or inheritance, the net wealth of the heir or beneficiary of the gift, and the kinship with the deceased or the donor). Some tax benefits could reduce the effective tax rate. In addition, the final tax rate may vary depending also on the legislation of the corresponding autonomous region.



## 2. Legal Entities with Tax Residency in Spain

### 2.1 Corporate Income Tax (*Impuesto sobre Sociedades*)

Both interest received periodically and income derived from the transfer, redemption or repayment of the debt securities are subject to CIT at the current general tax rate of 25% in accordance with the rules for this tax.

In the opinion of Banco Santander, there is no obligation to withhold on income payable to Spanish CIT taxpayers (which for the sake of clarity, include Spanish tax resident investment funds and Spanish tax resident pension funds) under the debt securities, provided the disclosure requirements set out in Section 44.5 are met. Consequently, in general, Banco Santander will not withhold tax on income payments to Spanish CIT taxpayers. This is without prejudice to the information reporting obligations of Banco Santander under general provisions of Spanish tax legislation.

However, to the extent that, among other requirements, the information about the debt securities required by Exhibit 99.1 is not submitted to Banco Santander in the manner indicated therein, such interest and income paid by Banco Santander shall be subject to withholding on account of CIT at the then-applicable rate (currently set at 19%).

Similarly, if the debt securities do not comply with the exemption requirements specified in the Reply to the Consultation of the Directorate General for Taxation (*Dirección General de Tributos*) dated 27 July 2004, income derived from the debt securities may be subject to withholding tax at the generally applicable rate of 19% (which, in case the debt securities are held by a Spanish resident entity and deposited with a Spanish resident entity acting as depository or custodian, will be generally levied by such depository or custodian).

Notwithstanding the above, amounts withheld, if any, may be credited by the relevant investors against its final CIT liability.

### 2.2 Net Wealth Tax (*Impuesto sobre el Patrimonio*)

Legal entities resident in Spain for tax purposes are not subject to Net Wealth Tax.

### 2.3 Inheritance and Gift Tax (*Impuesto sobre Sucesiones y Donaciones*)

Legal entities resident in Spain for tax purposes which acquire ownership or other rights over the debt securities by inheritance, gift or legacy are not subject to the Spanish Inheritance and Gift Tax but must include the market value of the debt securities in their taxable income for Spanish CIT purposes.

## 3. Individuals and Legal Entities with no tax residency in Spain

### 3.1 Non-resident Income Tax (*Impuesto sobre la renta de No Residentes*)

#### (a) Non-Spanish tax resident investors acting through a permanent establishment in Spain

If the debt securities form part of the assets of a permanent establishment in Spain of a person or legal entity who is not resident in Spain for tax purposes, the tax rules applicable to income deriving from such debt securities are, generally, the same as those previously set out for Spanish CIT taxpayers. See “Taxation in Spain—Legal Entities with Tax Residency in Spain—Corporate Income Tax (*Impuesto sobre Sociedades*)”. Ownership of the debt securities by investors who are not resident for tax purposes in Spain will not in itself create the existence of a permanent establishment in Spain.

#### (b) Non-Spanish tax resident investors not operating through a permanent establishment in Spain

Both interest payments received periodically and income derived from the transfer, redemption or repayment of the debt securities, obtained by individuals or entities who are not resident in Spain for tax purposes and who do not act, with respect to the debt securities listed on a regulated market, a multilateral trading facility or an organized market, through a permanent establishment in Spain, are exempt from NRIT and therefore no withholding on account of NRIT will be levied on such income provided certain requirements are met.



In order for the exemption to apply, it is necessary for the paying agent to comply with certain information obligations relating to the debt securities, in the manner detailed under “— *Information about the debt securities in connection with payments*” as laid down in Section 44.5 of Royal Decree 1065/2007. If these information obligations are not complied with in the manner indicated, Banco Santander will withhold at the then-applicable general rate (currently set at 19%) and Banco Santander will not pay additional amounts with respect to taxes withheld.

Holders not resident in Spain for tax purposes and entitled to exemption from NRIT but with respect to which Banco Santander does not timely receive the information about the debt securities from the paying agent in accordance with the procedure described in detail as set forth in Exhibit 99.1 hereto would have to apply directly to the Spanish tax authorities for any refund to which they may be entitled, in accordance with the procedures set forth in the Spanish NRIT Law and the relevant regulations.

### 3.2 Net Wealth Tax (*Impuesto sobre el Patrimonio*)

Individuals resident in a country with which Spain has entered into a double tax treaty in relation to Wealth Tax would generally not be subject to such tax. Otherwise, non-Spanish resident individuals whose properties and rights located in Spain, or that can be exercised within the Spanish territory, exceed EUR700,000 on the last day of any given year would be subject to Net Wealth Tax. The applicable rates currently range between 0.2% and 2.5%. The U.S. – Spain Income Tax Treaty (the “Treaty”) does not address Net Wealth Tax. Individuals who are non-resident in Spain for tax purposes who are resident in an European Union or European Economic Area Member State may apply the rules approved by the autonomous region where the assets and rights with more value are situated. All such prospective investors should consult their tax advisors.

However, non-Spanish resident individuals will be exempt from Net Wealth Tax in respect of the debt securities which income is exempt from NRIT as described above.

In accordance with Article 4 of the RDL 3/2016, as from year 2018, a full exemption on Spanish Net Wealth Tax would apply (*bonificación del 100%*), and therefore from year 2018 and onwards, individuals who are not resident in Spain shall be released from formal and filing obligations in relation to this Spanish Net Wealth Tax, unless the application of this full exemption is postponed.

### 3.3 Inheritance and Gift Tax (*Impuesto sobre Sucesiones y Donaciones*)

Individuals not resident in Spain for tax purposes who acquire ownership or other rights over debt securities by inheritance, gift or legacy, will be subject to the Spanish Inheritance and Gift Tax in accordance with the applicable Spanish regional and state rules, unless they reside in a country for tax purposes with which Spain has entered into a double tax treaty in relation to Inheritance and Gift Tax. In such case, the provisions of the relevant double tax treaty will apply. The U.S. and Spain have not entered into a double tax treaty in relation to Inheritance and Gift Tax.

If no treaty for the avoidance of double taxation in relation to Inheritance Gift Tax applies, applicable Inheritance Gift Tax rates would range between 7.65% and 81.6%, depending on various factors (such as the amount of the gift or inheritance, the net wealth of the heir or beneficiary of the gift, the kinship with the deceased or the donor and the qualification for tax benefits). These factors may vary depending on the application of the state’s or the autonomous region’s Inheritance Gift Tax laws. Generally, individuals who are non-resident in Spain for tax purposes are subject to Spanish Inheritance and Gift Tax according to the rules set forth in the state Inheritance and Gift Tax law. However, if the deceased or the donee are resident in an European Union or European Economic Area Member State, the applicable rules will be those corresponding to the relevant autonomous regions according to their law. As such, prospective investors should consult their tax advisors.

Non-Spanish resident legal entities which acquire ownership or other rights over the debt securities by inheritance, gift or legacy are not subject to the Spanish Inheritance and Gift Tax. Such acquisitions will be subject to NRIT (as described above), except as provided in any applicable double tax treaty entered into by Spain. In general, double tax treaties provide for the taxation of this type of income solely in the country of tax residence of the holder of the debt securities.



**4. Tax Rules for debt securities not Listed on a regulated market, a multilateral trading facility or an organized market**

**4.1 Withholding on Account of NRIT**

If the debt securities are not listed on a regulated market, a multilateral trading facility or an organized market on any payment date, interest or income from the transfer, redemption or repayment obtained by holders who are not resident in Spain and do not act through a permanent establishment in Spain in respect of the debt securities will be subject to withholding tax at the then-applicable general rate (currently set at 19%), except in the case of holders who are: (a) resident in a Member State of the European Union other than Spain and obtain the interest income either directly or through a permanent establishment located in another Member State of the European Union, provided that such holders (i) do not obtain the interest income on the debt securities through a permanent establishment in Spain or in a country or jurisdiction which is not a Member State of the European Union and (ii) are not resident of, or are not located in, nor obtain income through, a tax haven (as currently defined by Royal Decree 1080/1991, of 5 July, as amended) or (b) resident for tax purposes of a country which has entered into a convention for the avoidance of double taxation with Spain which provides for an exemption from Spanish tax or a reduced withholding tax rate with respect to interest payable to any holder. The withholding rate under the Treaty is generally 10%.

Individuals and entities that may benefit from such exemptions or reduced tax rates would have to apply directly to the Spanish tax authorities in order to obtain a refund of any amounts to which they may be entitled.

**4.2 Net Wealth Tax (Impuesto sobre el Patrimonio)**

See “Individuals with Tax Residency in Spain—Net Wealth Tax (*Impuesto sobre el Patrimonio*)” and “Individuals and Legal Entities with no tax residency in Spain—Net Wealth Tax (*Impuesto sobre el Patrimonio*)”.

**5. Information about the debt securities in connection with payments**

As described above, interest and other income paid by Banco Santander with respect to debt securities listed in a regulated market, a multilateral trading facility or an organized market will not be subject to Spanish withholding tax provided the procedures for delivering to Banco Santander the information described in Exhibit 99.1 of this prospectus are complied with.

The information obligations to be complied with in order to apply the exemption are those laid down in Section 44.5 (“**Section 44.5**”). In accordance with Section 44.5, the following information with respect to the debt securities must be submitted to Banco Santander from the paying agent before the close of business on the business day immediately preceding the date on which any payment of interest, principal or of any amounts in respect of the early redemption of the debt securities (each, a “**Payment Date**”) is due.

Such information comprises:

- (i) identification of the debt securities;
- (ii) income payment date (or refund if the debt securities are issued at discount or are segregated);
- (iii) total amount of income (or total amount to be refunded if the debt securities are issued at discount or are segregated); and
- (iv) total amount of the income corresponding to each clearing system located outside Spain.

In light of the above, Banco Santander and the issue and paying agent have arranged certain procedures to facilitate the collection of information concerning the debt securities by the close of business on the business day immediately preceding each relevant Payment Date. In particular, the issue and paying agent must certify the information above about the debt securities by means of a certificate in the Spanish language, an English language form of which is attached as Exhibit 99.1 of this prospectus. If, despite these procedures, the relevant information is not received by Banco Santander on each Payment Date, Banco Santander will withhold tax at the then-applicable rate (currently set at 19%) from any payment in respect of the relevant debt securities. Banco Santander will not pay any additional amounts with respect to any such withholding.

If, before the tenth day of the month following the month in which interest is paid, the issue and paying agent provides such information, Banco Santander will refund the amounts withheld.



Prospective holders of debt securities should note that neither Banco Santander nor the dealers accept any responsibility relating to the procedures established for the collection of information concerning the debt securities. Accordingly, neither Banco Santander nor the dealers will be liable for any damage or loss suffered by any holder of the debt securities who would otherwise be entitled to an exemption from Spanish withholding tax but whose income payments are nonetheless paid net of Spanish withholding tax because these procedures prove ineffective. Moreover, Banco Santander will not pay any additional amounts with respect to any such withholding.

## 6. Indirect taxation

The acquisition and transfer of the debt securities will be exempt from indirect taxes in Spain, i.e., exempt from Transfer Tax and Stamp Duty, in accordance with the Consolidated Text of such tax promulgated by Royal Legislative Decree 1/1993, of 24 September and exempt from Value Added Tax, in accordance with Law 37/1992, of 28 December regulating such tax.

## B. TAXATION IN SPAIN OF CONTINGENT CONVERTIBLE CAPITAL SECURITIES

### 1. Individuals with Tax Residency in Spain

#### 1.1 *Individual Income Tax (Impuesto sobre la Renta de las Personas Físicas)*

Both interest payments periodically received and income derived from the transfer, redemption or repayments of the contingent convertible capital securities constitute a return on investment obtained from the transfer of a person's own capital to third parties in accordance with the provisions of Section 25 of the IIT Law, and therefore must be included in the investor's IIT savings taxable base pursuant to the provisions of the aforementioned law and generally taxed at a flat rate of 19% on the first EUR 6,000; (ii) 21% from EUR 6,000.01 up to EUR 50,000 and 23% for any amount in excess of EUR 50,000.

Income from the transfer of the contingent convertible capital securities must be computed as the difference between the amounts obtained in the transfer, redemption or reimbursement of the contingent convertible capital securities and their acquisition or subscription value. Costs and expenses effectively borne on the acquisition and/or disposal of the contingent convertible capital securities must be taken into account, insofar as adequately evidenced, in calculating the income. When calculating the net income, expenses related to the management and deposit of the contingent convertible capital securities will be deductible, excluding those pertaining to discretionary or individual portfolio management.

According to Section 44.5, Banco Santander will pay interest without withholding to individual holders who are resident for tax purposes in Spain provided that the information about the contingent convertible capital securities required by Exhibit 99.1 is submitted by the relevant paying agent, notwithstanding the information obligations of Banco Santander under general provisions of Spanish tax legislation. In addition, income obtained upon redemption or repayment by Banco Santander of the contingent convertible capital securities may also be paid without withholding on account of IIT under the same conditions.

If those requirements are not met, such interest and income shall be subject to withholding on account of IIT at the then-applicable rate (currently set at 19%).

However, income derived from the transfer of the contingent convertible capital securities may be subject to withholding tax at the then-applicable general rate (currently set at 19%). Furthermore, in the case of contingent convertible capital securities held by Spanish resident individuals and deposited with a Spanish resident entity acting as depository or custodian, payments of interest or income obtained upon redemption or repayment by Banco Santander of the contingent convertible capital securities may be subject to withholding tax at the then-applicable general rate (currently set at 19%) which will be made by the depository or custodian. Any amounts withheld on account of IIT may be credited against the final IIT liability.

#### 1.2 *Net Wealth Tax (Impuesto sobre el Patrimonio)*

Individuals with tax residency in Spain are subject to Net Wealth Tax to the extent that their net worth exceeds EUR 700,000. Therefore, they should take into account the value of the contingent convertible capital securities which they hold as at each 31 December, the applicable rates currently ranging between 0.2% and 2.5%. The Autonomous Communities may have different provisions on this respect.



In accordance with Article 4 of the RDL 3/2016, as from year 2018, a full exemption on Spanish Net Wealth Tax would apply (*bonificación del 100%*), and therefore from year 2018 and onwards, individuals resident in Spain shall be released from formal and filing obligations in relation to this Spanish Net Wealth Tax, unless the application of this full exemption is postponed.

### **1.3 Inheritance and Gift Tax (*Impuesto sobre Sucesiones y Donaciones*)**

Individuals resident in Spain for tax purposes who acquire ownership or other rights over any contingent convertible capital securities by inheritance, gift or legacy will be subject to the Spanish Inheritance and Gift Tax in accordance with the then-applicable Spanish regional and State rules. The applicable tax rates currently range between 7.65% and 81.6% depending on relevant factors (such as the amount of the gift or inheritance, the net wealth of the heir or beneficiary of the gift, the kinship with the deceased or the donor and the qualification for tax benefits). These factors may vary depending on the application of the state's or the autonomous region's Inheritance Gift Tax laws.

## **2. Legal Entities with Tax Residency in Spain**

### **2.1 Corporate Income Tax (*Impuesto sobre Sociedades*)**

Both interest received periodically and income derived from the transfer, redemption or repayment of the contingent convertible capital securities are subject to CIT at the current general tax rate of 25% in accordance with the rules for this tax.

In the opinion of Banco Santander, there is no obligation to withhold on income payable to Spanish CIT taxpayers (which for the sake of clarity, include Spanish tax resident investment funds and Spanish tax resident pension funds), provided the disclosure requirements set out in Section 44.5 are met. Consequently, in general, Banco Santander will not withhold tax on income payments to Spanish CIT taxpayers. This is without prejudice to the information reporting obligations of Banco Santander under general provisions of Spanish tax legislation.

However, to the extent that, among other requirements, the information about the contingent convertible capital securities required by Exhibit 99.1 is not submitted to Banco Santander in the manner indicated therein, such interest and income paid by Banco Santander shall be subject to withholding on account of CIT at the then-applicable rate (currently set at 19%).

Similarly, if the contingent convertible capital securities do not comply with the exemption requirements specified in the Reply to the Consultation of the Directorate General for Taxation (*Dirección General de Tributos*) dated 27 July 2004, income derived from the contingent convertible capital securities may be subject to withholding tax at the generally applicable rate of 19% (which, in case the contingent convertible capital securities are held by a Spanish resident entity and deposited with a Spanish resident entity acting as depositary or custodian, will be generally levied by such depositary or custodian).

Notwithstanding the above, amounts withheld, if any, may be credited by the relevant investors against its final CIT liability.

### **2.2 Net Wealth Tax (*Impuesto sobre el Patrimonio*)**

Legal entities resident in Spain for tax purposes are not subject to Net Wealth Tax.

### **2.3 Inheritance and Gift Tax (*Impuesto sobre Sucesiones y Donaciones*)**

Legal entities resident in Spain for tax purposes which acquire ownership or other rights over the contingent convertible capital securities by inheritance, gift or legacy are not subject to the Spanish Inheritance and Gift Tax but must include the market value of the contingent convertible capital securities in their taxable income for Spanish CIT purposes.



### 3. Individuals and Legal Entities with no tax residency in Spain

#### 3.1 Non-resident Income Tax (*Impuesto sobre la renta de No Residentes*)

##### (a) Non-Spanish tax resident investors acting through a permanent establishment in Spain

If the contingent convertible capital securities form part of the assets of a permanent establishment in Spain of a person or legal entity who is not resident in Spain for tax purposes, the tax rules applicable to income deriving from such contingent convertible capital securities are, generally, the same as those previously set out for Spanish CIT taxpayers. See “— *Legal Entities with Tax Residency in Spain—Corporate Income Tax (Impuesto sobre Sociedades)*”. Ownership of the contingent convertible capital securities by investors who are not resident for tax purposes in Spain will not in itself create the existence of a permanent establishment in Spain.

##### (b) Non-Spanish tax resident investors not operating through a permanent establishment in Spain

Both interest payments received periodically and income derived from the transfer, redemption or repayment of the contingent convertible capital securities listed on a regulated market, a multilateral trading facility or an organized market by individuals or entities who are not resident in Spain for tax purposes and who do not act, with respect to the contingent convertible capital securities, through a permanent establishment in Spain, are exempt from NRIT and therefore no withholding on account of NRIT will be levied on such income provided certain requirements are met.

In order for the exemption to apply, it is necessary for the paying agent to comply with certain information reporting obligations relating to the contingent convertible capital securities, in the manner detailed under “—*Information about the contingent convertible capital securities in connection with payments*” as laid down in Section 44.5. If these information reporting obligations are not complied with in the manner indicated, Banco Santander will withhold at the then-applicable general rate (currently set at 19%) and Banco Santander will not pay additional amounts.

Holders not resident in Spain for tax purposes and entitled to exemption from NRIT but with respect to which Banco Santander does not timely receive the information about the contingent convertible capital securities from the paying agent in accordance with the procedure described in detail as set forth in Exhibit 99.1 hereto would have to apply directly to the Spanish tax authorities for any refund to which they may be entitled, in accordance with the procedures set forth in the Spanish NRIT Law and the relevant regulations.

#### 3.2 Net Wealth Tax (*Impuesto sobre el Patrimonio*)

Individuals resident in a country with which Spain has entered into a double tax treaty in relation to Wealth Tax would generally not be subject to such tax. The Treaty does not address Net Wealth Tax. Otherwise, non-Spanish resident individuals whose properties and rights located in Spain, or that can be exercised within the Spanish territory exceed EUR700,000 on the last day of any given year would be subject to Net Wealth Tax. The applicable rates currently range between 0.2% and 2.5%. Individuals who are non-resident in Spain for tax purposes who are resident in an European Union or European Economic Area Member State may apply the rules approved by the autonomous region where the assets and rights with more value are situated. All such prospective investors should consult their tax advisors.

However, non-Spanish resident individuals will be exempt from Net Wealth Tax in respect of the contingent convertible capital securities which income is exempt from NRIT as described above.

In accordance with Article 4 of the RDL 3/2016, as from year 2018, a full exemption on Spanish Net Wealth Tax would apply (*bonificación del 100%*), and therefore from year 2018 and onwards, individuals who are not resident in Spain shall be released from formal and filing obligations in relation to this Spanish Net Wealth Tax, unless the application of this full exemption is postponed.

Non-Spanish resident legal entities are not subject to Net Wealth Tax.

#### 3.3 Inheritance and Gift Tax (*Impuesto sobre Sucesiones y Donaciones*)

Individuals not resident in Spain for tax purposes who acquire ownership or other rights over contingent convertible capital securities by inheritance, gift or legacy, will be subject to the Spanish Inheritance and Gift Tax in





accordance with the applicable Spanish regional and state rules, unless they reside in a country for tax purposes with which Spain has entered into a double tax treaty in relation to Inheritance and Gift Tax. In such case, the provisions of the relevant double tax treaty will apply. The U.S. and Spain have not entered into a double tax treaty in relation to Inheritance and Gift Tax. Generally, individuals who are non-resident in Spain for tax purposes are subject to Spanish Inheritance and Gift Tax according to the rules set forth in the state Inheritance and Gift Tax law. However, if the deceased or the donee are resident in an European Union or European Economic Area Member State, the applicable rules will be those corresponding to the relevant autonomous regions according to their law. As such, prospective investors should consult their tax advisors.

Non-Spanish resident legal entities which acquire ownership or other rights over the contingent convertible capital securities by inheritance, gift or legacy are not subject to the Spanish Inheritance and Gift Tax. Such acquisitions will be subject to NRIT (as described above), except as provided in any applicable double tax treaty entered into by Spain. In general, double tax treaties provide for the taxation of this type of income solely in the country of tax residence of the holder of the contingent convertible capital securities.

#### 4. Tax Rules for contingent convertible capital securities not Listed on a regulated market, a multilateral trading facility or an organized market

##### 4.1 Withholding on Account of NRIT

If the contingent convertible capital securities are not listed on a regulated market, a multilateral trading facility or an organized market on any payment date, interest or income from the transfer, redemption or repayment obtained by holders who are not resident in Spain and do not act through a permanent establishment in Spain in respect of the contingent convertible capital securities will be subject to withholding tax at the general rate of 19%, except in the case of holders who are: (a) resident in a Member State of the European Union other than Spain and obtain the interest income either directly or through a permanent establishment located in another Member State of the European Union, provided that such holders (i) do not obtain the interest income on the contingent convertible capital securities through a permanent establishment in Spain or in a country or jurisdiction which is not a Member State of the European Union and (ii) are not resident of, or are not located in, nor obtain income through, a tax haven (as currently defined by Royal Decree 1080/1991, of 5 July, as amended) or (b) resident for tax purposes of a country which has entered into a convention for the avoidance of double taxation with Spain which provides for an exemption from Spanish tax or a reduced withholding tax rate with respect to interest payable to any holder. The withholding tax rate under the Treaty is generally 10%.

Individuals and entities that may benefit from such exemptions or reduced tax rates would have to apply directly to the Spanish tax authorities in order to obtain a refund of any amounts to which they may be entitled.

##### 4.2 Net Wealth Tax (*Impuesto sobre el Patrimonio*)

See “—Individuals with Tax Residency in Spain—Net Wealth Tax (*Impuesto sobre el Patrimonio*)” and “—Individuals and legal entities with no tax residency in Spain—Net Wealth Tax (*Impuesto sobre el Patrimonio*)”.

#### 5. Information about the contingent convertible capital securities in connection with payments

As described above, interest and other income paid with respect to the contingent convertible capital securities listed on a regulated market, a multilateral trading facility or an organized market will not be subject to Spanish withholding tax provided that the procedures for delivering to Banco Santander the information described in Exhibit 99.1 of this prospectus are complied with.

The information obligations to be complied with in order to apply the exemption are those laid down in Section 44.5. In accordance with this provision, the following information with respect to the contingent convertible capital securities must be submitted to Banco Santander by the paying agent before the close of business on the business day immediately preceding the date on which any payment of interest, principal or of any amounts in respect of the early redemption of the contingent convertible capital securities (each, a “**Payment Date**”) is due.

Such information comprises:

- (i) identification of the contingent convertible capital securities;
- (ii) income payment date (or refund if the contingent convertible capital securities are issued at discount or are segregated);



- (iii) total amount of income (or total amount to be refunded if the contingent convertible capital securities are issued at discount or are segregated); and
- (iv) total amount of the income corresponding to each clearing system located outside Spain.

In particular, the issue and paying agent must certify the information above about the contingent convertible capital securities by means of a certificate in the Spanish language, an English language form of which is attached as Exhibit 99.1 of this prospectus.

In light of the above, Banco Santander and the issue and paying agent, as the case may be, have arranged certain procedures to facilitate the collection of information concerning the contingent convertible capital securities by the close of business on the business day immediately preceding each relevant Payment Date. If, despite these procedures, the relevant information is not received by Banco Santander on each Payment Date, Banco Santander will withhold tax at the then-applicable rate (currently set at 19%) from any payment in respect of the relevant contingent convertible capital securities. Banco Santander will not pay any additional amounts with respect to any such withholding.

If, before the tenth day of the month following the month in which interest is paid, the issue and paying agent provides such information, Banco Santander will refund the amounts withheld.

**Prospective holders of contingent convertible capital securities should note that neither Banco Santander nor the dealers accept any responsibility relating to the procedures established for the collection of information concerning the contingent convertible capital securities. Accordingly, neither Banco Santander nor the dealers will be liable for any damage or loss suffered by any holder of contingent convertible capital securities who would otherwise be entitled to an exemption from Spanish withholding tax but whose income payments are nonetheless paid net of Spanish withholding tax because these procedures prove ineffective. Moreover, Banco Santander will not pay any additional amounts with respect to any such withholding.**

## 6. Indirect taxation

The acquisition and transfer of the contingent convertible capital securities will be exempt from indirect taxes in Spain, i.e., exempt from Transfer Tax and Stamp Duty, in accordance with the Consolidated Text of such tax promulgated by Royal Legislative Decree 1/1993, of 24 September and exempt from Value Added Tax, in accordance with Law 37/1992, of 28 December regulating such tax.

## **C. TAXATION IN SPAIN OF THE CONVERSION OF THE CONTINGENT CONVERTIBLE CAPITAL SECURITIES INTO ORDINARY SHARES OR ADSs**

### 1. Individuals with Tax Residency in Spain

#### 1.1 Individual Income Tax (*Impuesto sobre la Renta de las Personas Físicas*)

Income obtained on the conversion of the contingent convertible capital securities into ordinary shares, computed as the difference between the market value of the ordinary shares received and the acquisition or subscription value of the contingent convertible capital securities delivered in exchange, will be considered as a return on investment obtained from the transfer of own capital to third parties in accordance with the provisions of Section 25.2 of the PIT Law.

The tax treatment will be the one referred to in section B.1.1 above. Any income obtained in the conversion will not be subject to withholding tax on account of IIT.

### 2. Legal Entities with Tax Residency in Spain

#### 2.1 Corporate Income Tax (*Impuesto sobre Sociedades*)

Subject to the applicable accounting regulations, income derived from the conversion of the contingent convertible capital securities into ordinary shares will be computed as the difference between the market value of the ordinary shares received and the book value of the contingent convertible capital securities delivered in exchange. Such income will be subject to CIT at the current general rate of 25%.



The tax treatment will be the one referred to in section B.2.1 above. Any income obtained in the conversion will not be subject to withholding tax on account of CIT.

**3. Individuals and Legal Entities with no tax residency in Spain**

**3.1 Non-resident Income Tax (Impuesto sobre la renta de No Residentes)**

*(a) Non-Spanish tax resident investors acting through a permanent establishment in Spain*

Non-Spanish tax resident investors operating through a permanent establishment in Spain are subject to the same tax treatment that applies to Spanish CIT taxpayers.

*(b) Non-Spanish tax resident investors not operating through a permanent establishment in Spain*

Income obtained by non-Spanish tax resident investors on the conversion of the contingent convertible capital securities into ordinary shares or ADSs will be exempt from such NRIT and from withholding tax on account of NRIT, provided the contingent convertible capital securities are admitted to trading on a regulated market, a multilateral trading facility or an organized market and that the procedures for delivering to Banco Santander the information described in Exhibit 99.1 of this prospectus are complied with.

The tax treatment applicable to the income obtained will be the one described in section B.3.1.(b) above.

In the event that, upon the conversion of the contingent convertible capital securities into ordinary shares or ADSs, such contingent convertible capital securities are not listed on a regulated market, a multilateral trading facility or an organized market, the tax treatment will be the one referred to in section B.4. above. However, Banco Santander should not withhold any amount on account of NRIT as a result of the conversion (pursuant to Article 10.3.b) of the NRIT Regulations and Article 75.3.c) of the IIT Regulations). As such, non-Spanish tax resident investors shall be obliged to self-assess, file and, if applicable, pay the specific NRIT liability by submitting a Spanish tax return (currently, Form 210) within the time frame set out in the applicable Spanish regulations.

Notwithstanding the above, income derived from the conversion of the contingent convertible capital securities into ordinary shares or ADSs may be exempt from NRIT in Spain as set out in section B.4. above. In order for any of the indicated exemptions to apply, a non-Spanish tax resident investor must timely file the corresponding Spanish tax form (currently, Form 210) before the Spanish tax authorities, and attach to it a certificate of tax residence issued by the tax authority of its country of residence (which, if applicable, must state that the shareholder of ordinary shares is a resident of such country within the meaning of the relevant tax treaty (“TT”)) or, as the case may be, an equivalent TT form. U.S. investors should attach to the NRIT tax return an IRS certificate stating that to the knowledge of the IRS the U.S. investor is a resident of the United States within the meaning of the Treaty). Similarly, the non-Spanish tax resident investor’s tax representative in Spain and the depositary of the shares are also entitled to carry out such filing.

**D. TAXATION IN SPAIN ON OWNERSHIP AND TRANSFER OF ORDINARY SHARES AND ADSs**

**1. Individuals with Tax Residency in Spain**

**1.1 Individual Income Tax (Impuesto sobre la Renta de las Personas Físicas)**

*a) Taxation of dividends*

According to the Spanish PIT Law the following, amongst others, must be treated as gross capital income: income received by a Spanish shareholder in the form of dividends, consideration paid for attendance at shareholders’ meetings, income from the creation or assignment of rights of use or enjoyment of the shares and any other income received in his position as shareholder.

Gross capital income is reduced by any administration and custody expenses (but not by those incurred in individualized portfolio management); the net amount is included in the relevant Spanish shareholder’s savings taxable base and currently taxed at a flat rate of 19% on the first EUR 6,000; 21% from EUR 6,000.01 up to EUR 50,000 and 23% for any amount in excess of EUR 50,000.



Gross capital income will be reduced by any administration and custody expenses (but not by those incurred in individualized portfolio management) and the net amount must be included in the relevant Spanish shareholder savings taxable base.

The payment to Spanish shareholders of dividends or any other distribution will be generally subject to a withholding tax at the then-applicable rate (currently set at 19%). Such withholding tax is creditable from the PIT payable (*cuota líquida*); if the amount of tax withheld is greater than the amount of the net PIT payable, the taxpayer is entitled to a refund of the excess withheld in accordance with the PIT Law.

#### b) *Taxation of capital gains*

Gains or losses recorded by a shareholder subject to IIT as a result of the transfer of ordinary shares qualify for the purposes of the PIT Law as capital gains or losses and are subject to taxation according to the general rules applicable to capital gains. The amount of capital gains or losses is equal to the difference between the shares' acquisition value (plus any fees or taxes incurred) and the transfer value, which is the listed value of the shares as of the transfer date or, if higher, the agreed transfer price, less any fees or taxes incurred.

Capital gains or losses arising from the transfer of shares held by a Spanish shareholder are included in such Spanish savings taxable base and currently taxed at a flat rate of 19% on the first EUR 6,000; 21% from EUR 6,000.01 up to EUR 50,000 and 23% for any amount in excess of EUR 50,000.

Capital gains arising from the transfer of shares are not subject to withholding tax on account of PIT. Losses arising from the transfer of ordinary shares admitted to trading on certain official stock exchanges will not be treated as capital losses if ordinary shares of the same kind have been acquired during the period between two months before and two months after the date of the transfer which originated the loss. In these cases, the capital losses are included in the taxable base upon the transfer of the remaining ordinary shares by the taxpayer.

### 1.2 *Net Wealth Tax (Impuesto sobre el Patrimonio)*

Individuals with tax residency in Spain are subject to Net Wealth Tax to the extent that their net worth exceeds EUR 700,000. Therefore, they should take into account the value of the ordinary shares which they hold on the last day of any given year. The applicable rates currently range between 0.2% and 2.5%. The Autonomous Communities may have different provisions in this respect.

In accordance with Article 4 of the RDL 3/2016, as from year 2018, a full exemption on Spanish Net Wealth Tax would apply (*bonificación del 100%*), and therefore from year 2018 and onwards, individuals resident in Spain shall be released from formal and filing obligations in relation to this Spanish Net Wealth Tax, unless the application of this full exemption is postponed.

### 1.3 *Spanish Inheritance and Gift Tax (Impuesto sobre Sucesiones y Donaciones)*

Individuals resident in Spain for tax purposes who acquire ownership or other rights over any ordinary shares by inheritance, gift or legacy will be subject to the Spanish Inheritance and Gift Tax in accordance with the applicable Spanish regional and State rules. The applicable tax rates currently range between 7.65% and 81.6% depending on relevant factors (such as the amount of the gift or inheritance, the net wealth of the heir or beneficiary of the gift, the kinship with the deceased or the donor and the qualification for tax benefits). These factors may vary depending on the application of the state's or the autonomous region's Inheritance Gift Tax laws.

## 2. **Legal entities with Tax Residency in Spain**

### 2.1 *Corporate Income Tax (Impuesto sobre Sociedades)*

#### a) *Taxation of dividends*

Dividends from Banco Santander received by corporate Spanish shareholders, less any expenses inherent to holding the ordinary shares, must be included in the CIT taxable base. The general CIT tax rate is 25%.

Dividends in respect of the shares obtained by the shareholders that (i) hold, directly or indirectly, at least 5% in the issuer's stock or have a tax acquisition cost in the ordinary shares higher than €20 million; and (ii) hold such participation for at least one year prior to the relevant distribution date or commits to hold the participation for the time needed to complete such one-year holding period, may be exempt from CIT on that dividend as a general rule.



In case Banco Santander obtains dividends, profit distributions or income derived from transfer of shares in entities in an amount higher than 70% of Banco Santander's revenues, the application of the participation exemption may be subject to particularly complex requirements, substantially requiring that the shareholder holds an indirect participation of at least 5% in the share capital of Banco Santander's subsidiaries. Prospective investors should consult their own tax advisors in order to determine whether those requirements are complied with by the relevant shareholders.

In case the conditions to apply this exemption applies to the relevant shareholder, and provided that the minimum one year holding period requirement is complied with on the distribution date in respect of the ordinary shares, dividends will not be subject to withholding tax. Otherwise, dividends will be taxed at the applicable CIT tax rate of the taxpayer and a withholding will apply (currently set at 19%). This CIT withholding will be credited against the taxpayer's annual CIT due, and if the amount of tax withheld is greater than the amount of the annual CIT due, the taxpayer will be entitled to a refund of the excess withheld.

#### b) *Taxation of capital gains*

Gains or losses arising from the sale of the ordinary shares by a shareholder that is a Spanish CIT taxpayer must be included in its taxable base. The general CIT tax rate is 25%. Gains arising from the sale of the ordinary shares will not be subject to withholding tax on account of CIT.

For CIT payers that (i) hold, directly or indirectly, at least 5% in the issuer's stock or have a tax acquisition cost higher than €20 million; and (ii) hold such participation for at least one year prior to the relevant transfer, capital gains will be exempt from CIT as a general rule. Otherwise, capital gains will be taxed at the CIT rate applicable to the relevant taxpayer.

In case Banco Santander obtains dividends, profit distributions or income derived from transfer of shares in entities in an amount higher than 70% of Banco Santander's revenues, the application of the participation exemption may be subject to particularly complex requirements, substantially requiring that the shareholder holds an indirect participation of at least 5% in the share capital of Banco Santander's subsidiaries. Prospective investors should consult their own tax advisors in order to determine whether those requirements are complied with by the relevant shareholders.

Finally, losses arising on the transfer of the ordinary shares may be tax deductible under certain circumstances. Accordingly, shareholders are urged to consult their tax advisors regarding the CIT deductibility of losses arising on the transfer of ordinary shares.

## 2.2 *Net Wealth Tax (Impuesto sobre el Patrimonio)*

Legal entities resident in Spain for tax purposes are not subject to Net Wealth Tax.

## 2.3 *Inheritance and Gift Tax (Impuesto sobre Sucesiones y Donaciones)*

Legal entities resident in Spain for tax purposes which acquire ownership or other rights over the ordinary shares by inheritance, gift or legacy are not subject to the Spanish Inheritance and Gift Tax but must include the market value of the ordinary shares in their taxable income for Spanish CIT purposes.

## 3. **Individuals and legal entities with no tax residency in Spain**

### 3.1 *Non-Residents Income Tax (Impuesto sobre la Renta de No Residentes)*

#### a) *Non-Spanish tax resident investors acting through a permanent establishment in Spain*

##### *Taxation on dividends*

If the ordinary shares or ADSs form part of the assets of a permanent establishment in Spain of a person or legal entity who is not resident in Spain for tax purposes, the tax rules applicable to income deriving from such ordinary shares or ADSs are the same as those for legal entities with tax residency in Spain described in section D.2.1(a) above.



Ownership of the ordinary shares or ADSs by investors who are not resident for tax purposes in Spain will not in itself create the existence of a permanent establishment in Spain.

#### *Taxation of capital gains*

If the ordinary shares or ADSs form part of the assets of a permanent establishment in Spain of a person or legal entity who is not resident in Spain for tax purposes, the tax rules applicable to capital gains derived from such ordinary shares or ADSs are the same as those for legal entities with tax residency in Spain described section D.2.1(b) above.

#### *b) Non-Spanish tax resident investors not operating through a permanent establishment in Spain*

##### *Taxation of dividends*

According to the NRIT Law, dividends paid by a Spanish resident company to a non-Spanish tax resident shareholder not holding the ordinary shares through a permanent establishment located in Spain are subject to NRIT, withheld at the source on the gross amount of dividends, at the then-applicable rate (currently set at 19%).

This taxation can be eliminated as per the application of the NRIT exemption implementing the EU Council Directive 2011/96/EU of 30 November 2011, on the common system of taxation applicable to parent companies and subsidiaries of different Member States (the "EU Parent-Subsidiary Directive"). Under the EU Parent-Subsidiary Directive exemption, no Spanish withholding taxes should be levied on the dividends distributed by a Spanish subsidiary to its European Union ("EU") parent company, to the extent that the following requirements are met:

- the EU parent company maintains a direct or indirect holding in the capital of the Spanish subsidiary of at least 5% or has a tax acquisition cost exceeding €20 million. The holding must have been maintained uninterruptedly during the year prior to the date on which the distributed profit is due or, failing that, be maintained for the time required to complete such period (in the latter case, the withholding tax must be levied, although the EU parent company may request its refund from the Spanish Tax Authorities once the one-year period has been completed);
- the EU parent company is incorporated under the laws of a EU Member State, under one of the corporate forms listed in Annex I, Part A, of the EU Parent-Subsidiary Directive, and is subject to a Member State Corporate Income Tax (as listed in Annex I, Part B, of the EU Parent-Subsidiary Directive), without the possibility of being exempt; and
- the dividends distributed do not derive from the subsidiary's liquidation.

The EU Parent Subsidiary exemption will be applicable, subject to the compliance of certain requirements (similar to those indicated above), to dividends distributed by a Spanish subsidiary to its European Economic Area parent company provided that there is an effective exchange of tax information with such European Economic Area parent company's country.

However, this exemption contains specific anti-abuse rules (whereby this exemption might not be applicable if the shareholder is located in a tax haven or when the majority of the voting rights of the EU parent company are held, directly or indirectly, by an individual or legal entity not resident in the EU or in a member country of the European Economic Area with which there is an effective exchange of information in the terms described in the Spanish Law 36/2006 of 29 November, to prevent tax fraud, except in the latter case if the shareholder has been incorporated and operates for valid economic reasons and substantive business reasons) that need to be analyzed on a case-by-case basis and procedural formalities, such as the supply of a tax authorities-issued tax residence certificate.

In addition, shareholders resident in certain countries may be entitled to the benefits of a TT, in effect between Spain and their country of tax residence providing for a reduced tax rate or an exemption on dividends, subject to the satisfaction of any conditions specified in the relevant TT, including providing evidence of the tax residence of the shareholder by means of a certificate of tax residence duly issued by the tax authorities of its country of tax



residence (the U.S. Internal Revenue Service (“IRS”) for U.S. shareholders) indicating that the relevant investor is a resident therein within the meaning of the relevant TT (or equivalent specific form or wording required under an applicable TT or administrative practice). From a Spanish tax perspective, tax residence certificates issued by a foreign tax authority (or equivalent TT forms) are generally deemed to be valid only for one year as from their date of issuance. The withholding tax rate applicable to dividends under the Treaty is generally 15%.

In accordance with the Order of the Ministry of Finance and Taxation of 13 April 2000, upon distribution of a dividend, Banco Santander or its paying agent will withhold an amount equal to the NRIT amount required to be withheld according to the general rules set forth above, transferring the resulting net amount to the financial institution acting as a depository of the ordinary shares held by such shareholder. If the applicable depository is resident, domiciled or represented in Spain and it provides timely evidence (including a valid certificate of tax residence for purposes of the exemption or reduction of withholding tax being claimed, or equivalent form under the applicable TT), the depository will immediately receive the amount withheld, which will be credited to the relevant shareholder. In order to benefit from the Treaty’s reduced rate of 15%, a U.S. holder of ADSs must provide our depository with a certificate from the IRS stating that to the knowledge of the IRS, the U.S. holder is a resident of the United States within the meaning of the Treaty. The IRS certificate is valid for a period of one year. For these purposes, the relevant certificate of residence (or equivalent TT form) must be provided before the tenth day following the end of the month in which the dividends were paid. If such certificate of tax residence or, as the case may be, the equivalent TT form referred to above, is not provided to us by the relevant depository within the mentioned time frame the relevant NRIT withheld will be paid to the Spanish tax authorities, and a shareholder or ADS holder entitled to an exemption or reduction of NRIT pursuant to the NRIT Law or pursuant to an applicable TT may subsequently request a refund of the amounts withheld in excess from the Spanish tax authorities, following the standard refund procedure described below under “*Spanish refund procedure*”.

#### *Spanish refund procedure*

According to Royal Decree 1776/2004, dated July 30 and the Order of the Ministry of Finance and Taxation EHA/3316/2010, of December 17, a refund of an amount withheld in excess of any applicable NRIT (taking into account an available exemption or reduction under the NRIT Law or applicable TT) can be requested and obtained directly from the relevant Spanish tax authorities.

To pursue the refund claim, the shareholder or holder of ADSs is required to file inter alia:

- the corresponding Spanish tax refund form (currently, tax form 210);
- a valid certificate of tax residence issued by the relevant tax authorities of the country of residence of the relevant shareholder or holder of ADSs stating that the investor is a resident of such country (and, in case an exemption or reduction of NRIT is claimed pursuant to a TT, such certificate must indicate that the relevant investor is a resident therein within the meaning of the relevant TT) or, as the case may be, the equivalent TT form; and
- documentary evidence of the bank account to which the excess amount withheld should be paid.

For the purposes of this section, a shareholder or holder of ADSs must file the Form 210 (together with the corresponding documentation) during the period from February 1 of the year following the year in which the NRIT was withheld, and ending on the expiration of the 4-year period which commenced with the end of the corresponding filing period in which Banco Santander reported and paid such withholding taxes.

The Spanish Revenue Office must make the refund within the six months after the filing of the refund claim. If such period elapses without the shareholder receiving the refund, the shareholder is entitled to receive interest for late payment on the amount of the refund claimed.

For further details, prospective shareholders or holders of ADSs should consult their own tax advisors.

#### *Taxation of capital gains*

Capital gains derived from the transfer or sale of the ordinary shares or ADSs will be deemed to be income arising in Spain, and, therefore, subject to NRIT, at the then-applicable rate (currently set at 19%). Gains arising from the sale of the ordinary shares or ADSs are not currently subject to withholding tax on account of NRIT.



As a general rule, capital gains and losses will be calculated separately for each transaction and it is not possible to offset losses derived from a given transfer of shares against capital gains obtained upon another transfer of shares.

However, capital gains derived from the transfer of ordinary shares will be exempt from NRIT in Spain in any of the three following cases:

- Capital gains derived from a transfer of the ordinary shares carried out on an official Spanish secondary stock market (the Spanish Stock Exchanges), by any shareholder who is tax resident in a country that has entered into a TT with Spain containing an “exchange of tax information” clause are exempt from NRIT. This exemption is not applicable to capital gains obtained by a shareholder through a country or territory that is classified as a tax haven under the Spanish tax regulations (currently defined by Royal Decree 1080/1991, of 5 July, as amended), nor by a shareholder holding the ordinary shares through a permanent establishment located in Spain.
- Capital gains obtained directly by any shareholder resident of another EU Member State (other than Spain) or indirectly through a permanent establishment of such shareholder in a EU Member State (other than Spain), provided that the gain is not obtained through a country or territory defined as a tax haven under the applicable Spanish tax regulations or through a permanent establishment in Spain, shall be exempt from taxation in Spain if the issuer’s assets do not mainly consist of, directly or indirectly, real estate property located in Spain and:
  - i. in the case of a non-resident individual, the shareholder has not held a direct or indirect interest of at least 25% in the issuer’s capital or net equity during the twelve months preceding the transfer; or
  - ii. in the case of non-resident entities, the transfer fulfils the requirements set out in Article 21 of CIT Law.
- Capital gains realized by a shareholder or holder of ADSs who benefit from a TT entered into between their country of tax residence and Spain that provides for taxation of capital gains derived from the transfer of the ordinary shares only in the country of tax residence of such ordinary shares shareholder or holder of ADSs. As a result, capital gains realized by a U.S. investor entitled to the benefits of the Treaty will generally not be subject to Spanish taxation.

According to the Order dated December 17, 2010, shareholders or holders of ADSs, as the case may be, will be obliged to submit a Spanish tax form (currently tax form 210) within:

- the first 20 calendar days of April, July, October and January, in respect of capital gains accrued in the preceding quarter, if there is a tax payment to be made; or
- the first 20 calendar days of January of the year following that in which the relevant capital gain is accrued, if no tax is due (i.e., if qualifying for a tax exemption).

In order for the exemptions mentioned above to apply, a shareholder must timely file the applicable NRIT tax return before the Spanish tax authorities, and attach to it a certificate of tax residence issued by the tax authority of its country of residence (which, if applicable, must state that the shareholder of ordinary shares is a resident of such country within the meaning of the relevant TT) or, as the case may be, an equivalent TT form. U.S. investors should attach to the NRIT tax return an IRS certificate stating that to the knowledge of the IRS the U.S. investor is a resident of the United States within the meaning of the Treaty. As mentioned above, certificates of tax residence (or equivalent TT forms) will be generally valid only for a period of one year after their date of issuance.

Prospective shareholders should consult their own tax advisors to obtain detailed information regarding NRIT filings they may be required to make before the Spanish Tax Authorities.

**3.2 Net Wealth Tax (Impuesto sobre el Patrimonio)**

Non-Spanish tax resident individuals are subject to the Spanish Wealth Tax on the assets located in Spain (including the ordinary shares and ADSs) as of 31 December each year, unless an applicable TT provides otherwise. The Treaty does not address Net Wealth Tax.





Spanish Wealth Tax Law provides that the first EUR 700,000 of assets owned in Spain by Spanish non-resident tax individuals on the last day of any given year will be exempt from taxation, while the rest of the wealth will be taxed at a rate currently ranging between 0.2% and 2.5% although some reductions may apply. Individuals who are non-resident in Spain for tax purposes who are resident in an European Union or European Economic Area Member State may apply the rules approved by the autonomous region where the assets and rights with more value are situated. All such prospective investors should consult their tax advisors.

In accordance with Article 4 of the RDL 3/2016, as from year 2018, a full exemption on Spanish Net Wealth Tax would apply (*bonificación del 100%*), and therefore from year 2018 and onwards, individuals who are not resident in Spain shall be released from formal and filing obligations in relation to this Spanish Net Wealth Tax, unless the application of this full exemption is postponed.

Non-Spanish tax resident entities are not subject to Wealth Tax.

**3.3 Inheritance and Gift Tax (*Impuesto sobre Sucesiones y Donaciones*)**

Non-Spanish tax resident individuals who acquire ownership or other rights over the ordinary shares or ADSs by inheritance, gift or legacy, and who reside in a country with which Spain has entered into a double tax treaty in relation to Inheritance and Gift Tax will be subject to the provisions of the relevant double tax treaty. The U.S. and Spain have not entered into a double tax treaty in relation to Inheritance and Gift Tax.

If the provisions of the foregoing paragraph do not apply, such individuals will be subject to Inheritance and Gift Tax in accordance with the applicable Spanish regional and state rules. Generally, individuals who are non-resident in Spain for tax purposes are subject to Spanish Inheritance and Gift Tax according to the rules set forth in the state Inheritance and Gift Tax law. However, if the deceased or the donee are resident in an European Union or European Economic Area Member State, the applicable rules will be those corresponding to the relevant autonomous regions according to their law. As such, prospective investors should consult their tax advisors.

Non-Spanish resident legal entities which acquire ownership or other rights over the ordinary shares or ADSs by inheritance, gift or legacy are not subject to the Spanish Inheritance and Gift Tax. Such acquisitions will be subject to NRIT (as described above), except as provided in any applicable TT entered into by Spain. In general, TT provide for the taxation of this type of income solely in the country of tax residence of the shareholder of the ordinary shares or holder of ADSs.

**4. Indirect taxation**

The subscription, acquisition and transfer of the ordinary shares will be exempt from indirect taxes in Spain, i.e., exempt from Transfer Tax and Stamp Duty, in accordance with the Consolidated Text of such tax promulgated by Royal Legislative Decree 1/1993, of 24 September and exempt from Value Added Tax, in accordance with Law 37/1992, of 28 December regulating such tax.

**U.S. Federal Income Tax Considerations**

The following is a description of the material U.S. federal income tax consequences of the ownership and disposition of debt securities denominated in U.S. dollars or contingent convertible capital securities denominated in U.S. dollars and any Conversion Shares or ADSs representing Conversion Shares to the U.S. Holders described below. This summary applies only to the U.S. Holders described below that (i) hold debt securities or contingent convertible capital securities and any Conversion Shares or ADSs representing Conversion Shares as capital assets for U.S. federal income tax purposes and (ii) purchase the contingent convertible capital securities or debt securities in their offering, and in the case of debt securities, at their "issue price" which will equal the first price to the public (not including bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers) at which a substantial amount of the debt securities of such series is sold for money. To the extent this discussion relates to debt securities, it only applies to debt securities that are treated as debt for U.S. federal income tax purposes.



This discussion does not describe all of the tax consequences that may be relevant in light of a U.S. Holder's particular circumstances, including the alternative minimum tax and the Medicare contribution tax on net investment income, as well as tax consequences applicable to U.S. Holders subject to special rules, such as:

- certain financial institutions;
- insurance companies;
- dealers or certain traders in securities;
- persons holding contingent convertible capital securities, ADSs, Conversion Shares or debt securities as part of a straddle, wash sale, constructive sale, conversion transaction or integrated transaction;
- persons whose functional currency for U.S. federal income tax purposes is not the U.S. dollar;
- entities classified as partnerships for U.S. federal income tax purposes;
- tax-exempt entities, "individual retirements accounts" or "Roth IRAs";
- persons who own or are deemed to own 10% or more of our voting shares; or
- persons holding debt securities, contingent convertible capital securities, Conversion Shares or ADSs in connection with a trade or business conducted outside of the United States.

If an entity that is classified as a partnership for U.S. federal income tax purposes owns debt securities, contingent convertible capital securities, ADSs or Conversion Shares, the U.S. federal income tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. Partnerships owning debt securities, contingent convertible capital securities, ADSs or Conversion Shares and partners in such partnerships should consult their tax advisors as to the U.S. federal income tax consequences of owning and disposing of the debt securities, contingent convertible capital securities, ADSs or Conversion Shares in their particular circumstances.

As used herein, a "U.S. Holder" is a beneficial owner of debt securities, contingent convertible capital securities, ADSs or Conversion Shares, as applicable, that is, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation, or other entity taxable as a corporation, created or organized in or under the laws of the United States, any state therein or the District of Columbia; or
- an estate or trust the income of which is subject to U.S. federal income taxation regardless of its source.

This summary is based on the Internal Revenue Code of 1986, as amended (the "Code"), administrative pronouncements, judicial decisions, final, temporary and proposed Treasury regulations, and the income tax treaty between the United States and Spain (the "Treaty"), all as of the date hereof, any of which is subject to change, possibly with retroactive effect.

Persons considering the purchase of debt securities or contingent convertible capital securities of any series should consult their tax advisors with regard to the application of the U.S. federal, state, local and non-U.S. tax consequences of owning and disposing of the securities offered hereunder in their particular situations. The applicable prospectus supplement may include a discussion of additional or alternative U.S. federal income tax considerations that are not described herein and that may be relevant to a particular series of debt securities or contingent convertible capital securities. For example, the applicable prospectus supplement may include a summary of U.S. federal income tax consequences to U.S. Holders of owning and disposing of debt securities that are not U.S. dollar-denominated or debt securities that are subject to the rules applicable to contingent payment debt instruments. Accordingly, U.S. Holders should also consult the applicable prospectus supplement for any additional discussion regarding U.S. federal income taxation with respect to the specific securities offered thereunder.



Except as specifically discussed under “— *Passive Foreign Investment Company Rules*” below, this discussion assumes that Banco Santander is not, and will not become, a passive foreign investment company (“PFIC”) for U.S. federal income tax purposes.

## Taxation of Debt Securities

### *Characterization of the Debt Securities*

There is no direct legal authority as to the proper U.S. federal income tax treatment of an instrument that is denominated as a debt instrument and has significant debt features, but that is subject to statutory bail-in powers such as the Regulatory Bail-in Power. Therefore, prospective investors should consult their tax advisors as to the proper characterization of the debt securities for U.S. federal income tax purposes. We believe that the debt securities should be treated as debt for U.S. federal income tax purposes and the remainder of this discussion so assumes.

### *Stated Interest*

Stated interest on a debt security will be taxable to a U.S. Holder as ordinary interest income at the time it accrues or is received in accordance with a U.S. Holder’s method of accounting for U.S. federal income tax purposes. The amount of interest taxable as ordinary income will include amounts withheld in respect of Spanish taxes and, without duplication, any payments of Additional Amounts paid with respect thereto. Interest income (and any original issue discount described below) will constitute foreign-source income for foreign tax credit purposes. Subject to applicable restrictions and limitations, which vary depending upon the U.S. Holder’s circumstances, Spanish taxes withheld from interest income on a debt security at a rate not exceeding any applicable rate under the Treaty may be creditable against the U.S. Holder’s U.S. federal income tax liability. Spanish taxes withheld in excess of any applicable rate under the Treaty or that are otherwise refundable under Spanish law will not be eligible for credit against a U.S. Holder’s U.S. federal income tax liability. The rules governing foreign tax credits are complex. U.S. Holders should consult their own tax advisors regarding the creditability of foreign taxes in their particular circumstances. In lieu of claiming a credit, a U.S. Holder may elect to deduct such Spanish taxes in computing its taxable income, subject to generally applicable limitations. An election to deduct foreign taxes instead of claiming foreign tax credits applies to all foreign taxes paid or accrued in the relevant taxable year.

Special rules applicable to certain “OID debt securities,” “floating rate debt securities” and “short-term debt securities” are described below.

### *Original Issue Discount*

If a debt security’s “issue price” (as described above) is less than its “stated redemption price at maturity”, the debt security will be considered to have been issued at an original issue discount (“OID”) for U.S. federal income tax purposes (“OID debt security”) unless the difference is less than a specified de minimis amount, as described below. A debt security’s stated redemption price at maturity will equal the sum of all payments under the debt security, other than payments of “qualified stated interest”. Generally, “qualified stated interest” is stated interest unconditionally payable at least annually during the entire term of the debt security at a single fixed rate or, if certain conditions are met, at a variable rate. See “—*Floating Rate Debt Securities*” below for a discussion regarding the treatment of certain variable rates as qualified stated interest.

If the difference between a debt security’s stated redemption price at maturity and its issue price is less than a prescribed de minimis amount (generally 1/4 of 1% of the stated redemption price at maturity multiplied by the number of complete years to maturity), the debt security will not be considered to have OID. A U.S. Holder of OID debt securities will be required to include any qualified stated interest in income in accordance with the U.S. Holder’s method of accounting for U.S. federal income tax purposes, as described in “—*Stated Interest*” above. In addition, a U.S. Holder of OID debt securities will be required to include in income the sum of the daily portions of the OID for each day on which the U.S. Holder held the OID debt securities. The U.S. Holder will be required to include such OID as it accrues in accordance with a constant yield method based on a compounding of interest, regardless of whether cash attributable to this income is received and regardless of such U.S. Holder’s regular method of tax accounting. Under this method, U.S. Holders of OID debt securities generally will be required to include in income increasingly greater amounts of OID in successive accrual periods.



For purposes of applying the OID rules and determining whether a debt security is issued with OID, if the issuer or a holder has an unconditional option to redeem a debt security prior to its stated maturity date and certain other conditions are met, this option will be presumed to be exercised if, by utilizing any date on which the debt security may be redeemed as the maturity date and the amount payable on that date in accordance with the terms of the debt security as the amount payable at maturity, in the case of the issuer's option, the yield on the debt security would be lower than its yield to the stated maturity date or, in the case of the holder's option, the yield on the debt security would be higher than its yield to the stated maturity date. If this option is not in fact exercised, the debt security would be treated, solely for purposes of calculating OID, as if it were redeemed, and a new debt security were issued, on the presumed exercise date for an amount equal to the debt security's adjusted issue price on that date. The adjusted issue price of a debt security is generally the issue price of the debt security, increased by the amount of OID previously includible in gross income and decreased by the amount of any payment previously made, other than a payment of qualified stated interest.

A U.S. Holder may make an election to include in income all interest that accrues on a debt security (including stated interest, OID and de minimis OID), as adjusted by any amortizable bond premium (as described below), in accordance with a constant yield method based on the compounding of interest (a "constant yield election"). The constant yield election will apply only to the debt securities with respect to which it is made and may not be revoked without the consent of the Internal Revenue Service.

### ***Floating Rate Debt Securities***

The discussion below addresses floating rate debt securities that pay interest at a rate equal to a LIBOR, plus a fixed spread, throughout the term of the debt security which is unconditionally payable at least annually in cash. If a floating rate debt security of any series is issued with different terms, the applicable prospectus supplement may describe relevant U.S. federal income tax consequences to U.S. Holders.

All stated interest on a floating rate debt security will constitute qualified stated interest and will be taxed as described in "*Stated Interest*" above. Thus, a floating rate debt security generally will not be treated as issued with OID, unless the floating rate debt security is issued at an issue price below its principal amount and the difference between the issue price and the principal amount equals or is in excess of the specified de minimis amount described in "*Original Issue Discount*" above. In general, if a floating rate debt security is issued with OID, the amount of qualified stated interest and the amount of OID that accrues during an accrual period will be determined under the rules applicable to fixed rate debt instruments, as discussed under "*Stated Interest*" and "*Original Issue Discount*" above, by assuming that the variable rate is a fixed rate equal to the value, as of the issue date, of the LIBOR plus the applicable fixed spread. The qualified stated interest allocable to an accrual period will be increased (or decreased) if the interest actually paid during an accrual period exceeds (or is less than) the interest assumed to be paid during the accrual period pursuant to the foregoing sentence.

### ***Short-Term Debt Securities***

A debt security that matures one year or less from its date of issuance taking into account the last possible date on which the debt security could be outstanding (a "short-term debt security") will be treated as being issued at a discount and none of the interest paid on the short-term debt security will be treated as qualified stated interest. In general, a cash-method U.S. Holder of a short-term debt security is not required to accrue the discount for U.S. federal income tax purposes unless it elects to do so (but will be required to include in income any interest paid to such U.S. Holder). U.S. Holders who so elect and certain other U.S. Holders, including those who report income on the accrual method of accounting for U.S. federal income tax purposes, are required to include the discount in income as it accrues on a straight-line basis, unless another election is made to accrue the discount according to a constant-yield method based on daily compounding. In the case of a U.S. Holder who is not required and who does not elect to include the discount in income currently, any gain realized on the sale, exchange or retirement of the short-term debt security will be ordinary income to the extent of the discount accrued on a straight-line basis (or, if elected, according to a constant-yield method based on daily compounding) through the date of sale, exchange or retirement. In addition, such U.S. Holders will be required to defer deductions for any interest paid on indebtedness incurred to purchase or carry short-term debt securities in an amount not exceeding the accrued discount that has not been included in income.



### ***Prior Accrued Interest on Additional Debt Securities***

Under the terms of the debt securities, if Banco Santander issues additional debt securities that have the same CUSIP, ISIN or other identifying number of the outstanding debt securities (“additional debt securities”), the additional debt securities and the outstanding debt securities must be fungible for U.S. federal income tax purposes. U.S. Holders that purchase additional debt securities upon their issuance may elect to exclude from income the portion of the interest paid on the first interest date on additional debt securities that relates to the period from the preceding interest payment date on the outstanding debt securities to the issue date of the additional debt securities (“prior accrued interest”). Prior accrued interest not included in income will not form part of any amortizable bond premium (as described under “—Amortizable Bond Premium” below). A U.S. Holder’s tax basis in an additional debt securities will generally equal the cost of such additional debt security to the U.S. Holder, reduced by any prior accrued interest excluded from income.

### ***Amortizable Bond Premium***

If a U.S. Holder purchases a debt security for an amount that is greater than the sum of all amounts payable on the debt security other than qualified stated interest, the U.S. Holder will be considered to have purchased the debt security with amortizable bond premium. In general, the amount of amortizable bond premium will be equal to the excess of the purchase price over the sum of all amounts payable on the debt security other than qualified stated interest and the U.S. Holder may elect to amortize this premium, using a constant yield method, over the remaining term of the debt security. The amortization of bond premium on a debt security with an unconditional early redemption put or call option may be deferred. A U.S. Holder may generally use the amortizable bond premium allocable to an accrual period to offset qualified stated interest required to be included in such U.S. Holder’s income with respect to the debt security in that accrual period. A U.S. Holder that elects to amortize bond premium must reduce its tax basis in the debt security by the amount of the amortized premium. An election to amortize bond premium applies to all taxable debt obligations then owned and thereafter acquired by the U.S. Holder and may be revoked only with the consent of the Internal Revenue Service. If a U.S. Holder makes a constant yield election (as described in “—Original Issue Discount” above) for a debt security with amortizable bond premium, such election will result in a deemed election to amortize bond premium for all of the U.S. Holder’s debt instruments with amortizable bond premium and may be revoked only with the permission of the Internal Revenue Service.

### ***Sale, Retirement or Other Taxable Disposition of the Debt Securities***

Upon the sale, retirement or other taxable disposition of a debt security, a U.S. Holder will recognize taxable gain or loss equal to the difference between the amount realized on the sale, retirement or disposition and the U.S. Holder’s adjusted tax basis in the debt security. For these purposes, the amount realized does not include any amount attributable to accrued but unpaid interest. Amounts attributable to accrued but unpaid interest will be taxed as interest as described in “—Stated Interest” above. A U.S. Holder’s adjusted tax basis in the debt securities will generally equal the cost of such debt security to the U.S. Holder, increased by the amount of any OID included in income and decreased by (i) the amount of any payment on the debt securities other than payments of qualified stated interest, (ii) any amortized bond premium and (iii) any prior accrued interest excluded from income as described above in “Prior Accrued Interest on Additional Debt Securities.”

Except as described under “Short-Term Debt Securities” above, gain or loss recognized on the sale, retirement or other taxable disposition of a debt security will generally be capital gain or loss, and will be long-term capital gain or loss if at the time of the sale, retirement or taxable disposition the U.S. Holder has held the debt security for more than one year. Gain or loss will generally be U.S.-source for purposes of computing a U.S. Holder’s foreign tax credit limitation. The deductibility of capital losses may be subject to limitations.

### ***Substitution of Issuer***

An assumption of the obligations of Banco Santander under any series of debt securities as described in “Description of Debt Securities—Substitution of Issuer” may be considered for U.S. federal income tax purposes to be a taxable exchange by U.S. Holders of the debt securities for new debt securities, resulting in recognition of taxable gain or loss for U.S. federal income tax purposes and other possible adverse tax consequences. U.S. Holders should consult their tax advisors regarding the U.S. federal, state, local and other tax consequences of any assumption of Banco Santander’s obligations under the debt securities.



## Taxation of Contingent Convertible Capital Securities

### *Characterization of the Contingent Convertible Capital Securities*

Banco Santander believes, and the remainder of this discussion assumes, that the contingent convertible capital securities will be treated as equity for U.S. federal income tax purposes.

### *Taxation of Distributions*

Distributions with respect to contingent convertible capital securities (including Spanish taxes withheld and, without duplication, any Additional Amounts paid with respect thereto), generally will be treated as dividends to the extent paid out of Banco Santander's current or accumulated earnings and profits as determined under U.S. federal income tax principles. Because Banco Santander does not maintain calculations of its earnings and profits under U.S. federal income tax principles, it is expected that distributions generally will be reported to U.S. Holders as dividends.

Distributions will be treated as foreign-source dividend income for foreign tax credit purposes and will not be eligible for the dividends-received deduction generally available to U.S. corporations under the Code. Subject to applicable limitations, distributions received by certain non-corporate U.S. Holders may be eligible for taxation as "qualified dividend income" and therefore may be taxable at reduced rates applicable to long-term capital gains. Non-corporate U.S. Holders should consult their own tax advisors regarding the availability of the long-term capital gains rate on dividends in their particular circumstances.

Distributions will be included in a U.S. Holder's income on the date of the U.S. Holder's receipt of the distribution. The amount of dividend income will include any Spanish taxes withheld and, without duplication, any Additional Amounts paid with respect thereto. Subject to applicable restrictions and limitations, which vary depending upon the U.S. Holder's circumstances, Spanish taxes withheld from distributions at a rate not exceeding any applicable rate under the Treaty may be creditable against the U.S. Holder's U.S. federal income tax liability. Spanish taxes withheld in excess of any applicable rate under the Treaty or that are otherwise refundable under Spanish law will not be eligible for credit against a U.S. Holder's U.S. federal income tax liability. The rules governing foreign tax credits are complex. U.S. Holders should consult their own tax advisors regarding the creditability of foreign taxes in their particular circumstances. In lieu of claiming a credit, a U.S. Holder may elect to deduct such Spanish taxes in computing its taxable income, subject to generally applicable limitations. An election to deduct foreign taxes instead of claiming foreign tax credits applies to all foreign taxes paid or accrued in the relevant taxable year.

### *Sale, Redemption or Other Taxable Disposition*

A U.S. Holder will generally recognize capital gain or loss on the sale, redemption or other taxable disposition of contingent convertible capital securities (other than the receipt of Conversion Shares or ADSs upon Conversion, which will be treated as described below under "Consequences of a Conversion"), assuming that in the case of a redemption, the U.S. Holder does not own, and is not deemed to own any of our Common Shares at such time. The gain or loss will be long-term capital gain or loss if the U.S. Holder has held the contingent convertible capital securities for more than one year. The amount of the U.S. Holder's gain or loss will equal the difference between the amount realized on the sale or other disposition and the U.S. Holder's tax basis in the contingent convertible capital securities. The deductibility of capital losses is subject to limitations. Any gain or loss will generally be U.S.-source gain or loss for foreign tax credit purposes.

### *Substitution of Issuer*

An assumption of the obligations of Banco Santander under any series of contingent convertible capital securities as described under "Description of Contingent Convertible Capital Securities—Substitution of Issuer" might be considered for U.S. federal income tax purposes to be an exchange by the U.S. Holders of the contingent convertible capital securities of such series for new contingent convertible capital securities, resulting in recognition of taxable gain or loss for these purposes and possible other adverse tax consequences for such U.S. Holders. U.S. Holders should consult their tax advisors regarding the U.S. federal, state and local income tax consequences of an assumption.



### ***Consequences of a Trigger Conversion***

A conversion of contingent convertible capital securities into Conversion Shares or ADSs generally will not be a taxable event for U.S. federal income tax purposes. A U.S. Holder's tax basis in, and holding period for, the Conversion Shares or ADSs received upon conversion will generally be the same as the U.S. Holder's tax basis in, and holding period of, the contingent convertible capital securities.

### **Taxation of ADSs and Conversion Shares**

This discussion, to the extent it relates to the ADSs, is based in part on representations by the ADS Depository and assumes that each obligation under the Deposit Agreement and any related agreement or undertaking will be performed in accordance with its terms. In general, a U.S. Holder who owns ADSs will be treated as the owner of the Conversion Shares represented by those ADSs for U.S. federal income tax purposes. Accordingly, no gain or loss will be recognized if a U.S. Holder exchanges ADSs for the underlying Conversion Shares represented by those ADSs.

The U.S. Treasury has expressed concern that parties to whom American depository shares are released before shares are delivered to the depository, or intermediaries in the chain of ownership between holders and the issuer of the security underlying the American depository shares, may be taking actions that are inconsistent with the claiming of foreign tax credits by holders of American depository shares. These actions would also be inconsistent with the claiming of the reduced rate of tax described above applicable to dividends received by certain non-corporate holders. Accordingly, the creditability of Spanish taxes, and the availability of the reduced tax rate for dividends received by certain non-corporate U.S. Holders could be affected by actions taken by such parties or intermediaries.

### ***Taxation of Distributions***

Subject to the discussion above regarding concerns expressed by the U.S. Treasury, distributions paid on the Conversion Shares or ADSs (other than certain pro-rata distributions of Common Shares) will generally be treated in the manner described above under "*Taxation of Contingent Convertible Capital Securities—Taxation of Distributions*" with the following modifications. In the case of ADSs, a dividend will be included in a U.S. Holder's income on the date of the Depository's receipt of the dividend. The amount of any dividend paid in euros will be the U.S. dollar amount calculated by reference to the exchange rate in effect on the date of receipt by the U.S. Holder, or in the case of ADSs, by the Depository, regardless of whether the payment is converted into U.S. dollars on the date of receipt. The amount of any scrip dividend (see "Item 4. Information on the Company—A. History and development of the company—Principal Capital Expenditures and Divestitures—Capital Increases" in Banco Santander's Annual Report on Form 20-F for the year ended December 31, 2016) will be the U.S. dollar fair market value of the Common Shares on the date of receipt. If a cash dividend is converted into U.S. dollars on the date of receipt, the U.S. Holder generally should not be required to recognize foreign currency gain or loss in respect of the dividend payment. A U.S. Holder may have foreign currency gain or loss if a cash dividend is converted into U.S. dollars after the date of receipt. Any foreign currency gain or loss realized by a U.S. Holder on a sale or other disposition of the foreign currency will be U.S.-source ordinary income or loss.

Subject to applicable restrictions and limitations, which vary depending upon the U.S. Holder's circumstances, non-refundable Spanish taxes withheld from distributions at a rate not exceeding any applicable rate under the Treaty will be creditable against the U.S. Holder's U.S. federal income tax liability. Spanish taxes withheld in excess of any applicable rate under the Treaty will not be eligible for credit against a U.S. Holder's U.S. federal income tax liability. The rules governing foreign tax credits are complex. U.S. Holders should consult their own tax advisors regarding the creditability of foreign taxes in their particular circumstances. In lieu of claiming a credit, a U.S. Holder may elect to deduct such Spanish taxes in computing its taxable income, subject to generally applicable limitations. An election to deduct foreign taxes instead of claiming foreign tax credits applies to all foreign taxes paid or accrued in the relevant taxable year.

### ***Sale and Other Taxable Disposition of ADSs or Ordinary Shares***

A U.S. Holder's sale or other taxable disposition of Conversion Shares or ADSs will generally be treated in the manner described above under "*Taxation of Contingent Convertible Capital Securities—Sale, Redemption or Other Taxable Disposition*," with the U.S. Holder's adjusted basis and amount realized each determined in U.S. dollars.



### Passive Foreign Investment Company Rules

Based upon certain proposed Treasury regulations that are not yet in effect, but are generally proposed to become effective for taxable years beginning after December 31, 1994, Banco Santander does not expect to be a PFIC for U.S. federal income tax purposes for its current taxable year or for the foreseeable future. However, since PFIC status depends upon the composition of Banco Santander's income and assets and the market value of its assets from time to time, there can be no assurance that Banco Santander will not be a PFIC for any taxable year.

If Banco Santander were a PFIC for any taxable year during which a U.S. Holder held contingent convertible capital securities, ADSs or Conversion Shares, certain adverse U.S. federal income tax consequences could apply to the U.S. Holder. Generally, gain recognized by a U.S. Holder on a sale, redemption or other disposition (including under certain circumstances, a pledge) of contingent convertible capital securities, ADSs or Conversion Shares would be allocated ratably over the U.S. Holder's holding period for the contingent convertible capital securities, ADSs or Conversion Shares. The amounts allocated to the taxable year of the sale or other disposition and to any year before Banco Santander became a PFIC would be taxed as ordinary income. The amount allocated to each other taxable year would be subject to tax at the highest rate in effect for individuals or corporations, as appropriate, for that taxable year, and an interest charge would be imposed on the resulting tax liability for such taxable year. Further, any payments or distributions in respect of contingent convertible capital securities, ADSs or Conversion Shares in excess of 125% of the average of the annual payments or distributions on such contingent convertible capital securities, ADSs or Conversion Shares received by the U.S. Holder during the preceding three years or the U.S. Holder's holding period, whichever is shorter, would be subject to taxation in the same manner as gain, as described immediately above. Certain elections may be available that would result in alternative treatments (such as the mark-to-market election) of the contingent convertible capital securities, ADSs and Conversion Shares if Banco Santander were a PFIC.

U.S. Holders should consult their tax advisors regarding the PFIC rules.

### Information Reporting and Backup Withholding

Payments of interest, dividends and proceeds from the sale, redemption or other disposition of debt securities, contingent convertible capital securities, ADSs or Conversion Shares that are made within the United States or through certain U.S.-related financial intermediaries may be subject to information reporting and to backup withholding, unless the U.S. Holder is an exempt recipient or, in the case of backup withholding, the U.S. Holder provides a correct taxpayer identification number and certifies that no loss of exemption from backup withholding has occurred. The amount of any backup withholding from a payment to a U.S. Holder will be allowed as a credit against such U.S. Holder's U.S. federal income tax liability and may entitle such U.S. Holder to a refund, provided that the required information is timely furnished to the Internal Revenue Service.

Certain U.S. Holders who are individuals and certain closely-held entities may be required to report information relating to their ownership of an interest in certain foreign financial assets, including securities of a non-U.S. entity subject to certain exceptions (including an exception for securities held in accounts at financial institutions, in which case the accounts may be reportable if maintained by non-U.S. financial institutions). U.S. Holders should consult their tax advisors regarding their reporting obligations with respect to the debt securities, contingent convertible capital securities, ADSs or Conversion Shares.





### BENEFIT PLAN INVESTOR CONSIDERATIONS

A fiduciary of a pension, profit-sharing or other employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), including entities such as collective investment funds, partnerships and separate accounts whose underlying assets include the assets of such plans (collectively, “ERISA Plans”) should consider the fiduciary standards of ERISA in the context of the ERISA Plan’s particular circumstances before authorizing an investment in the securities. Among other factors, the fiduciary should consider whether the investment would satisfy the prudence and diversification requirements of ERISA and would be consistent with the documents and instruments governing the ERISA Plan.

Section 406 of ERISA and Section 4975 of the Internal Revenue Code of 1986, as amended, (the “Code”) prohibit ERISA Plans, as well as plans (including individual retirement accounts and Keogh plans) subject to Section 4975 of the Code (together with ERISA Plans, “Plans”), from engaging in certain transactions involving the “plan assets” with persons who are “parties in interest” under ERISA or “disqualified persons” under Section 4975 of the Code (in either case, “Parties in Interest”) with respect to such Plans. As a result of our business, we, and our current and future affiliates, may be Parties in Interest with respect to many Plans. Where we (or our affiliate) are a Party in Interest with respect to a Plan (either directly or by reason of our ownership interests in our directly or indirectly owned subsidiaries), the purchase and holding of the securities by or on behalf of the Plan could be a prohibited transaction under Section 406 of ERISA and/or Section 4975 of the Code, unless exemptive relief were available under an applicable exemption (as described below).

Certain prohibited transaction class exemptions (“PTCEs”) issued by the U.S. Department of Labor may provide exemptive relief for direct or indirect prohibited transactions resulting from the purchase or holding of the securities. Those class exemptions are PTCE 96-23 (for certain transactions determined by in-house asset managers), PTCE 95-60 (for certain transactions involving insurance company general accounts), PTCE 91-38 (for certain transactions involving bank collective investment funds), PTCE 90-1 (for certain transactions involving insurance company separate accounts) and PTCE 84-14 (for certain transactions determined by independent qualified asset managers). In addition, ERISA Section 408(b)(17) and Section 4975(d)(20) of the Code may provide a limited exemption for the purchase and sale of the securities and related lending transactions, provided that neither the issuer of the securities nor any of its affiliates have or exercise any discretionary authority or control or render any investment advice with respect to the assets of the Plan involved in the transaction and provided further that the Plan pays no more, and receives no less, than adequate consideration in connection with the transaction (the so-called “service provider exemption”). There can be no assurance that any of these statutory or class exemptions will be available with respect to transactions involving the securities.

Accordingly, the securities may not be purchased or held by any Plan, any entity whose underlying assets include “plan assets” by reason of any Plan’s investment in the entity (a “Plan Asset Entity”) or any person investing “plan assets” of any Plan, unless such purchaser or holder is eligible for the exemptive relief available under PTCE 96-23, 95-60, 91-38, 90-1 or 84-14 or the service-provider exemption or there is some other basis on which the purchase and holding of the securities will not constitute a non-exempt prohibited transaction under ERISA or Section 4975 of the Code. Each purchaser or holder of the securities or any interest therein will be deemed to have represented by its purchase or holding of the securities that (a) it is not a Plan and its purchase and holding of the securities is not made on behalf of or with “plan assets” of any Plan or (b) its purchase and holding of the securities will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

Certain governmental plans (as defined in Section 3(32) of ERISA), church plans (as defined in Section 3(33) of ERISA) and non-U.S. plans (as described in Section 4(b)(4) of ERISA) (“Non-ERISA Arrangements”) are not subject to these “prohibited transaction” rules of ERISA or Section 4975 of the Code, but may be subject to similar rules under other applicable laws or regulations (“Similar Laws”). Accordingly, each such purchaser or holder of the securities shall be required to represent (and deemed to have represented by its purchase of the securities) that such purchase and holding is not prohibited under applicable Similar Laws.

Due to the complexity of these rules, it is particularly important that fiduciaries or other persons considering purchasing the securities on behalf of or with “plan assets” of any Plan consult with their counsel regarding the relevant provisions of ERISA, the Code or any Similar Laws and the availability of exemptive relief under PTCE 96-23, 95-60, 91-38, 90-1, 84-14, the service provider exemption or some other basis on which the acquisition and holding will not constitute a non-exempt prohibited transaction under ERISA or Section 4975 of the Code or a violation of any applicable Similar Laws.



Each purchaser and holder of the securities has exclusive responsibility for ensuring that its purchase, holding and subsequent disposition of the securities does not violate the fiduciary or prohibited transaction rules of ERISA, the Code or any applicable Similar Laws. The sale of any securities to any Plan is in no respect a representation by us or any of our affiliates or representatives that such an investment meets all relevant legal requirements with respect to investments by Plans or Non-ERISA Arrangements generally or any particular Plan or Non-ERISA Arrangement, or that such an investment is appropriate for Plans or Non-ERISA Arrangements generally or any particular Plan or Non-ERISA Arrangement.



## PLAN OF DISTRIBUTION (CONFLICTS OF INTEREST)

We may sell debt securities, contingent convertible capital securities or ordinary shares (including ADSs) to or through underwriters or dealers and also may sell all or part of such securities directly to other purchasers or through agents.

The distribution of the securities may be effected from time to time in one or more transactions at a fixed price or prices, which may be changed, or at market prices prevailing at the time of sale, at prices related to such prevailing market prices or at negotiated prices.

In connection with the sale of securities, we may compensate underwriters in the form of discounts, concessions or commissions or in any other way that the applicable prospectus supplement describes. Underwriters may sell securities to or through dealers, and the dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents. Underwriters, dealers and agents that participate in the distribution of securities may be deemed to be underwriters, and any discounts or commissions that we pay them and any profit on the resale of securities by them may be deemed to be underwriting discounts and commissions, under the Securities Act of 1933 ("Securities Act"). Any such underwriter or agent will be identified, and any such compensation that we pay will be described, in the prospectus supplement.

Under agreements which we may enter into, we may be required to indemnify underwriters, dealers and agents who participate in the distribution of securities against certain liabilities, including liabilities under the Securities Act.

Each new series of debt securities, ordinary shares and contingent convertible capital securities will be a new issue of securities with no established trading market. If securities of a particular series are not listed on a U.S. national securities exchange, certain broker-dealers may make a market in those securities, but will not be obligated to do so and may discontinue any market making at any time without notice. We cannot give any assurance that any broker-dealer will make a market in securities of any series or as to the liquidity of the trading market for those securities.

### Conflicts of Interest

To the extent an initial offering of the securities will be distributed by an affiliate of ours, each such offering of securities will be conducted in compliance with the requirements of FINRA Rule 5121 of the Financial Industry Regulatory Authority, Inc. ("FINRA") regarding a FINRA member firm's distribution of securities of an affiliate and related conflicts of interest. No underwriter, selling agent or dealer utilized in the initial offering of securities who is an affiliate of ours will confirm sales to accounts over which it exercises discretionary authority without the prior specific written approval of its customer.

Following the initial distribution of any of these securities, affiliates of ours may offer and sell these securities in the course of their businesses as broker-dealers. Such affiliates may act as principals or agents in these transactions and may make any sales at varying prices related to prevailing market prices at the time of sale or otherwise. Such affiliates may also use this prospectus in connection with these transactions. None of our affiliates is obligated to make a market in any of these securities and may discontinue any market-making activities at any time without notice.

Underwriting discounts and commissions on securities sold in the initial distribution will not exceed 8% of the offering proceeds.

Any underwriter, selling agent or dealer utilized in the initial offering of securities will not confirm sales to accounts over which it exercises discretionary authority without the prior specific written approval of its customer.

### Delayed Delivery Arrangements

If so indicated in the prospectus supplement, we may authorize underwriters or other persons acting as their agents to solicit offers by certain institutions to purchase ordinary shares, debt securities or contingent convertible capital securities from it pursuant to contracts providing for payment and delivery on a future date. Institutions with which such contracts may be made include commercial and savings banks, insurance companies, pension funds,



investment companies, educational and charitable institutions and others, but in all cases such institutions must be approved by us. The obligations of any purchaser under any such contract will be subject to the condition that the purchase of the offered securities shall not at the time of delivery be prohibited under the laws of the jurisdiction to which such purchaser is subject. The underwriters and such other agents will not have any responsibility in respect of the validity or performance of such contracts.



## LEGAL OPINIONS

The validity of the securities will be passed upon by Davis Polk & Wardwell LLP as to matters of U.S. federal and New York law, and by Uría Menéndez as to matters of Spanish law.

## EXPERTS

The financial statements as of December 31, 2016 and for the year ended December 31, 2016, and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) as of December 31, 2016 incorporated in this prospectus by reference to the Annual Report on Form 20-F for the year ended December 31, 2016 have been so incorporated in reliance on the report of PricewaterhouseCoopers Auditores, S.L., an independent registered accounting firm, given on the authority of said firm as experts in auditing and accounting.

The consolidated financial statements as of December 31, 2015 and 2014, and for each of the two years in the period ended December 31, 2015, incorporated in this prospectus by reference from the Group's 2016 Annual Report on Form 20-F for the year ended December 31, 2016 have been audited by Deloitte, S.L., an independent registered public accounting firm, as stated in their report, which is incorporated herein by reference. Such consolidated financial statements have been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

## ENFORCEMENT OF CIVIL LIABILITIES

Each of Banco Santander and the subsidiary issuers is a corporation (sociedad anónima) organized under the laws of the Kingdom of Spain. Substantially all of the directors and executive officers of Banco Santander and all of the directors of the subsidiary issuers, and certain of the experts named in this prospectus, are not residents of the United States. A substantial majority of the assets of Banco Santander and substantially all of the assets of the subsidiary issuers are located outside the United States. As a result, it may not be possible for investors to effect service of process within the United States upon us or those persons or to enforce against them judgments obtained in U.S. courts predicated upon civil liability provisions of the federal securities laws of the United States. Banco Santander and the subsidiary issuers are advised by Spanish legal counsel that there is doubt as to the enforceability in Spain in original actions or in actions for enforcement of judgments of U.S. courts, of liabilities predicated solely upon the securities laws of the United States. Banco Santander and the subsidiary issuers have submitted to the non-exclusive jurisdiction of New York state and U.S. federal courts sitting in New York City for the purpose of any suit, action or proceeding arising out of or in connection with the securities and have appointed Banco Santander, S.A., New York Branch, as agent in New York City to accept service of process in any such action.

## WHERE YOU CAN FIND MORE INFORMATION

### Ongoing Reporting

We file reports and other information with the SEC. You can read and copy these reports and other information that we file with the SEC at the SEC's Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549, United States. You can call the SEC at 1-800-SEC-0330 for further information about the Public Reference Room. The SEC's website, at <http://www.sec.gov>, contains reports and other information in electronic form that we have filed electronically with the SEC. You can also read this material at the offices of The New York Stock Exchange, 20 Broad Street, New York, New York 10005, United States, on which certain of our securities are listed.

We will provide the Trustee for any debt securities and contingent convertible capital securities and the ADR depository for any ordinary shares with our annual reports, which will include a description of operations and our annual audited consolidated financial statements. We will also provide any Trustee or ADR depository with interim reports that will include unaudited interim summary consolidated financial information. Upon receipt, the Trustee or the ADR depository will mail the reports to all record holders of the debt securities, contingent convertible capital securities or ordinary shares. In addition, we will provide the Trustee or the ADR depository with all notices of meetings at which holders of debt securities, contingent convertible capital securities or ordinary shares are entitled to vote, and all other reports and communications that are made generally available to holders of debt securities, contingent convertible capital securities or ordinary shares.



## Registration Statement

This prospectus is part of a registration statement that we filed with the SEC. As exhibits to the registration statement, we have also filed or incorporated by reference the indentures, the underwriting agreements, the ADR deposit agreement as well as various other documents listed in the exhibit index. Statements contained in this prospectus as to the contents of any contract or other document referred to in this prospectus are not necessarily complete, and in each instance reference is made to the copy of such contract or other document filed as an exhibit to the registration statement, each such statement being qualified in all respects by such reference. For further information, you should refer to the registration statement. You can obtain the full registration statement from the SEC or from us.

## INCORPORATION OF DOCUMENTS BY REFERENCE

The SEC allows us to “incorporate by reference” the information that we file with the SEC. This permits us to disclose important information to you by referring to these filed documents. Any information referred to in this way is considered part of this prospectus, and any information that we file with the SEC after the date of this prospectus will automatically be deemed to update and supersede this information.

We incorporate by reference the Group’s 2016 Annual Report on Form 20-F for the year ended December 31, 2016 filed with the SEC on March 31, 2017.

We also incorporate by reference all subsequent annual reports of the Group filed on Form 20-F and any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act and certain reports on Form 6-K, if they state that they are incorporated by reference into this prospectus, that we furnish to the SEC after the date of this prospectus and until we or any underwriters sell all of the securities.

Upon written or oral request, we will provide free of charge a copy of any or all of the documents that we incorporate by reference into this prospectus, other than exhibits which are not specifically incorporated by reference into this prospectus. To obtain copies you should contact us at Investor Relations, Ciudad Grupo Santander, Avenida de Cantabria s/n, 28660 Boadilla del Monte, Madrid, Spain (telephone: (011) 34-91-259-6520).



**CAUTIONARY STATEMENT ON FORWARD-LOOKING STATEMENTS**

This prospectus, any accompanying prospectus supplement and the documents incorporated by reference into this prospectus contain statements that constitute “forward-looking statements” within the meaning of the U.S. Private Securities Litigation Reform Act of 1995. Forward-looking statements include, but are not limited to, information regarding:

- exposure to various types of market risks;
- management strategy;
- capital expenditures;
- earnings and other targets; and
- asset portfolios.

Forward-looking statements may be identified by words such as “expect,” “project,” “anticipate,” “should,” “intend,” “probability,” “risk,” “VaR,” “RORAC,” “target,” “goal,” “objective,” “estimate,” “future” and similar expressions or by the use of similar expressions or variations on such expressions, or by the discussion of strategy or objectives. Forward-looking statements are based on current plans, estimates and projections, and are subject to inherent risks, uncertainties and other factors which could cause actual results to differ materially from the future results expressed or implied by such forward-looking statements.

You should understand that the following important factors could affect our future results and could cause those results or other outcomes to differ materially from those anticipated in any forward-looking statement:

- general economic or industry conditions in Spain, the U.K., the U.S., other European countries, Brazil, other Latin American countries and the other areas in which we have significant business activities or investments;
- exposure to various types of market risks, principally including interest rate risk, foreign exchange rate risk and equity price risk;
- a worsening of the economic environment in Spain, the U.K., other European countries, Brazil, other Latin American countries, and the U.S., and an increase of the volatility in the capital markets;
- the effects of a continued decline in real estate prices, particularly in Spain and the U.K.;
- monetary and interest rate policies of the European Central Bank and various central banks;
- inflation or deflation;
- the effects of non-linear market behavior that cannot be captured by linear statistical models, such as the VaR model we use;
- changes in competition and pricing environments;
- the inability to hedge some risks economically;
- the adequacy of loss reserves;
- acquisitions or restructurings of businesses that may not perform in accordance with our expectations;
- changes in demographics, consumer spending, investment or saving habits;
- potential losses associated with prepayment of our loan and investment portfolio, declines in the value of collateral securing our loan portfolio, and counterparty risk; and



200FX&amp;=&amp;eN315PFs

- changes in competition and pricing environments as a result of the progressive adoption of the internet for conducting financial services and/or other factors;
- political stability in Spain, the U.K., other European countries, Latin America and the U.S.;
- changes in Spanish, U.K., E.U., Latin American, U.S. or other jurisdictions' laws, regulations or taxes, including changes in regulatory capital and liquidity requirements;
- increased regulation in light of the global financial crisis;
- damage to our reputation;
- our ability to integrate successfully our acquisitions and the challenges inherent in diverting management's focus and resources from other strategic opportunities and from operational matters while we integrate these acquisitions; and
- the outcome of our negotiations with business partners and governments;
- potential losses associated with an increase in the level of non-performance by counterparties to other types of financial instruments;
- technical difficulties and/or failure to improve or upgrade our information technology;
- changes in our ability to access liquidity and funding on acceptable terms, including as a result of changes in our credit spreads or a downgrade in our credit ratings or those of our more significant subsidiaries;
- our exposure to operational losses (e.g., failed internal or external processes, people and systems);
- changes in our ability to recruit, retain and develop appropriate senior management and skilled personnel;
- the occurrence of force majeure, such as natural disasters, that impact our operations or impair the asset quality of our loan portfolio; and
- the impact of changes in the composition of our balance sheet on future net interest income.

Other factors could also adversely affect our results or the accuracy of forward-looking statements in this prospectus, and you should not consider the factors discussed here or in the Group's 2016 Annual Report or any of its interim reports filed on Form 6-K incorporated by reference herein, to be a complete set of all potential risks or uncertainties.

The forward-looking statements made in this prospectus speak only as of the date of this prospectus. We do not intend to publicly update or revise these forward-looking statements to reflect events or circumstances after the date of this prospectus, and we do not assume any responsibility to do so. You should, however, consult any further disclosures of a forward-looking nature we made in other documents filed with the SEC that are incorporated by reference into this prospectus.





**PART II**

**INFORMATION NOT REQUIRED IN THE PROSPECTUS**

*Capitalized terms used but not otherwise defined in this Part II of the registration statement shall have the meaning ascribed to them in the prospectus included in this registration statement.*

**Item 8. Indemnification of Directors and Officers**

**Banco Santander, S.A.**

**Indemnification under Banco Santander’s By-Laws (estatutos) and Spanish Law**

Under Banco Santander’s bylaws and Spanish law, Banco Santander’s directors will be liable to Banco Santander and the shareholders and creditors of Banco Santander for any damage they cause through acts contrary to the law or the bylaws of Banco Santander, or acts carried out in breach of the duties inherent to the discharge of their office. All directors shall be jointly liable for those acts, except those that evidence that they did not intervene in the approval and execution of the act and did not know about the act or, if they knew, did everything that they deem reasonable to avoid the damage or, at least, expressly opposed the act. The fact that the act has been approved, ratified or authorized by a Shareholders’ Meeting shall not relieve the directors from their liability. No provision of Banco Santander’s bylaws provides for the indemnification of the directors with respect to such liabilities.

Pursuant to resolutions adopted by the Executive Committee of the Board of Directors of Banco Santander on March 27, 2017 in connection with the filing of this registration statement, Banco Santander has undertaken to indemnify its directors and officers, to the extent permitted by applicable law and Banco Santander’s bylaws, against any loss, claim, damages and judgments, and any expenses (including legal expenses) relating thereto, to which they may become subject under any U.S. state or federal securities laws insofar as such liabilities arise in connection with this registration statement.

**Directors and Officers Insurance**

Banco Santander maintains an insurance policy that protects officers and directors of Banco Santander and its consolidated subsidiaries from civil liabilities incurred as a result of actions taken in their official capacity associated with any civil, criminal or administrative process.

**Item 9. Exhibits**

The following is a list of all exhibits filed as part of this registration statement on Form F-3.

<u>Number</u>	<u>Description</u>
1.1*	Form of Underwriting Agreement for the ordinary senior debt securities
1.2*	Form of Underwriting Agreement for the second ranking senior debt securities
1.3*	Form of Underwriting Agreement for the subordinated debt securities
1.4*	Form of Underwriting Agreement for the contingent convertible capital securities
4.1	Form of Ordinary Senior Debt Indenture between Banco Santander, S.A., as Issuer, and The Bank of New York Mellon, as Trustee
4.2	Form of Second Senior Ranking Debt Indenture between Banco Santander, S.A., as Issuer, and The Bank of New York Mellon, as Trustee
4.3	Form of Subordinated Debt Indenture between Banco Santander, S.A., as Issuer, and The Bank of New York Mellon, as Trustee
4.4	Form of Contingent Convertible Capital Securities Indenture between Banco Santander, S.A., as Issuer, and The Bank of New York Mellon, as Trustee



<u>Number</u>	<u>Description</u>
4.5	Form of Amended and Restated Deposit Agreement among Banco Santander, S.A., The Bank of New York Mellon, as Depositary, and all Owners and Holders from time to time of American Depositary Receipts issued thereunder (incorporated herein by reference to Exhibit 99.1 to the registration statement on Form F-6 (File No. 333-213557), filed on September 9, 2016)
4.6	English translation of the Bylaws ( <i>Estatutos Sociales</i> ) of Banco Santander, S.A. (incorporated herein by reference to Banco Santander, S.A.'s annual report on Form 20-F, filed on March 31, 2017)
5.1	Opinion and Consent of Davis Polk & Wardwell LLP, U.S. counsel to Banco Santander, S.A.
5.2	Opinion and Consent of Uría Menéndez, Spanish counsel to Banco Santander, S.A.
23.1	Consent of PricewaterhouseCoopers Auditores, S.L.
23.2	Consent of Deloitte, S.L.
23.3	Consent of Davis Polk & Wardwell LLP (included in 5.1)
23.4	Consent of Uría Menéndez (included in 5.2)
25.1	Statement of Eligibility for the Form of Ordinary Senior Debt Indenture between Banco Santander, S.A., as Issuer, and The Bank of New York Mellon, as Trustee, on Form T-1
25.2	Statement of Eligibility for the Form of Second Ranking Senior Debt Indenture between Banco Santander, S.A., as Issuer, and The Bank of New York Mellon, as Trustee, on Form T-1
25.3	Statement of Eligibility for the Form of Subordinated Debt Indenture between Banco Santander, S.A., as Issuer, and The Bank of New York Mellon, as Trustee, on Form T-1
25.4	Statement of Eligibility for the Form of Contingent Convertible Capital Securities Indenture between Banco Santander, S.A., as Issuer, and The Bank of New York Mellon, as Trustee, on Form T-1
99.1	Spanish Tax Exhibit

\* To be filed, if necessary, by amendment or as an exhibit to a report filed or submitted pursuant to Section 13(a) or 15(d) of the U.S. Securities Exchange Act of 1934, as amended, and incorporated by reference.

#### **Item 10. Undertakings**

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange Commission (the "SEC") pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;



200FX&amp;=eN3lknsf

*provided, however*, that paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) To file a post-effective amendment to the registration statement to include any financial statements required by "Item 8.A. of Form 20-F" at the start of any delayed offering or throughout a continuous offering. Financial statements and information otherwise required by Section 10(a)(3) of the Securities Act need not be furnished, provided, that the registrants includes in the prospectus, by means of a post-effective amendment, financial statements required pursuant to this paragraph (4) and other information necessary to ensure that all other information in the prospectus is at least as current as the date of those financial statements. Notwithstanding the foregoing, a post-effective amendment need not be filed to include financial statements and information required by Section 10(a)(3) of the Securities Act or Rule 3-19 of Regulation S-X if such financial statements and information are contained in periodic reports filed with or furnished to the SEC by the registrants pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(5) That, for the purpose of determining liability under the Securities Act to any purchaser:

(A) Each prospectus filed by a registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(6) That, for the purpose of determining liability of a registrant under the Securities Act to any purchaser in the initial distribution of the securities, each undersigned registrant undertakes that in a primary offering of securities of such undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, such undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) any preliminary prospectus or prospectus of such undersigned registrant relating to the offering required to be filed pursuant to Rule 424;



200FX&=&eN3Iso=L]

(ii) any free writing prospectus relating to the offering prepared by or on behalf of such undersigned registrant or used or referred to by such undersigned registrant;

(iii) the portion of any other free writing prospectus relating to the offering containing material information about such undersigned registrant or its securities provided by or on behalf of such undersigned registrant; and

(iv) any other communication that is an offer in the offering made by such undersigned registrant to the purchaser.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of Banco Santander, S.A.'s annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of each registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by a registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, that registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.



**SIGNATURES**

Pursuant to the requirements of the Securities Act, Banco Santander, S.A. certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Madrid, Kingdom of Spain, on April 3, 2017.

BANCO SANTANDER, S.A.

By: /s/ José Antonio Soler  
Name: José Antonio Soler  
Title: Authorized Representative



200FX&=eN3m3z7s@

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS that each of the individuals whose signature appears below (whether as a director, officer or authorized representative of Banco Santander, S.A., or otherwise) constitutes and appoints any member of the Board of Directors of Banco Santander, S.A., José García Cantera, Francisco Javier Illescas Fernández-Bermejo, José Antonio Soler Ramos, Antonio Torío Martín, Juan Urigoen Irusta, Óscar García Maceiras, Eduardo Otero Romero, and Silvana Leticia Borgatti and each of them, as his or her true and lawful attorney-in-fact and agent, with full and several power of substitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement or any such subsequent registration statement and reports on Form 6-K relating thereto and any registration statement filed pursuant to Rule 426(b) under the Securities Act, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agents or any of them, or their substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
_____ Ana Botín	Chairman of the Board of Directors	April 3, 2017
_____ /s/ José Antonio Álvarez José Antonio Álvarez	Chief Executive Officer	April 3, 2017
_____ Bruce Carnegie-Brown	Vice Chairman of the Board of Directors	April 3, 2017
_____ Rodrigo Echenique	Vice Chairman of the Board of Directors	April 3, 2017
_____ Matías R. Inciarte	Vice Chairman of the Board of Directors	April 3, 2017
_____ Guillermo de la Dehesa	Vice Chairman of the Board of Directors	April 3, 2017
_____ Homaira Akbari	Director	April 3, 2017
_____ Ignacio Benjumea	Director	April 3, 2017
_____ Javier Botín	Director	April 3, 2017
_____ Sol Daurella	Director	April 3, 2017



Carlos Fernández	Director	April 3, 2017
Esther Giménez-Salinas	Director	April 3, 2017
Belén Romana	Director	April 3, 2017
Isabel Tocino	Director	April 3, 2017
Juan Miguel Villar-Mir	Director	April 3, 2017
/s/ José Cantera		
José Cantera	Group Chief Financial Officer	April 3, 2017
/s/ José Doncel		
José Doncel	Group Chief Accounting Officer	April 3, 2017
/s/ Mercedes Pacheco		
Mercedes Pacheco	Executive Director, New York Branch; Authorized U.S. Representative	April 3, 2017



**Exhibit 4.1**

**BANCO SANTANDER, S.A.**  
as Issuer

**TO**

**THE BANK OF NEW YORK MELLON,**  
acting through its London Branch  
as Trustee

**FORM OF INDENTURE**

**Ordinary Senior Debt Securities**





200FX&=eN4B@zSs=

**BANCO SANTANDER, S.A.**

Reconciliation and tie between Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, and this Ordinary Senior Debt Securities Indenture, dated [●].

<u>Trust Indenture Act Section</u>		<u>Ordinary Senior Debt Securities Indenture Section</u>
§310	(a)(1)	6.10
	(a)(2)	6.10
	(a)(3)	Not Applicable
	(a)(4)	Not Applicable
	(b)	6.09, 6.11
§311	(a)	6.14
	(b)	6.14
§312	(a)	7.01, 7.02(a)
	(b)	7.02(b)
	(c)	7.02(c)
§313	(a)	7.03(a)
	(b)	7.03(a)
	(c)	1.06, 7.03(a)
	(d)	7.03(b)
§314	(a)	7.04, 10.06
	(b)	Not Applicable
	(c)(1)	1.02
	(c)(2)	1.02
	(c)(3)	Not Applicable
	(d)	Not Applicable
	(e)	1.02
	(f)	Not Applicable
§315	(a)	6.01
	(b)	6.03, 7.03(a)
	(c)	6.01
	(d)	6.01
	(d)(1)	6.01
	(d)(2)	6.01
	(d)(3)	6.01
	(e)	5.14
§316	(a)(1)(A)	5.12
	(a)(1)(B)	5.13
	(a)(2)	Not Applicable
	(a)(last sentence)	1.01
	(b)	5.08
§317	(a)(1)	5.03
	(a)(2)	5.04
	(b)	10.03
§318	(a)	1.08

NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be a part of this Ordinary Senior Debt Securities Indenture.



**TABLE OF CONTENTS**

	<u>PAGE</u>
<b>ARTICLE 1</b>	
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION	
Section 1.01. <i>Definitions</i>	1
Section 1.02. <i>Compliance Certificates and Opinions</i>	11
Section 1.03. <i>Form of Documents Delivered to Trustee</i>	12
Section 1.04. <i>Acts of Holders</i>	12
Section 1.05. <i>Notices, Etc. to Trustee or Company</i>	13
Section 1.06. <i>Notice to Holders; Waiver</i>	14
Section 1.07. <i>Language of Notices, Etc</i>	15
Section 1.08. <i>Conflict with Trust Indenture Act</i>	15
Section 1.09. <i>Effect of Headings and Table of Contents</i>	15
Section 1.10. <i>Successors and Assigns</i>	15
Section 1.11. <i>Separability Clause</i>	15
Section 1.12. <i>Benefits of Ordinary Senior Debt Securities Indenture</i>	15
Section 1.13. <i>Governing Law</i>	16
Section 1.14. <i>Business Days and Legal Holidays</i>	16
Section 1.15. <i>Appointment of Agent for Service</i>	16
Section 1.16. <i>Calculation Agent</i>	17
Section 1.17. <i>Waiver of Jury Trial</i>	17
Section 1.18. <i>Judgment Currency</i>	17
<b>ARTICLE 2</b>	
SENIOR DEBT SECURITY FORMS	
Section 2.01. <i>Forms Generally</i>	18
Section 2.02. <i>Status of the Ordinary Senior Debt Securities</i>	18
Section 2.03. <i>Form of Trustee's Certificate of Authentication</i>	19
<b>ARTICLE 3</b>	
THE ORDINARY SENIOR DEBT SECURITIES	
Section 3.01. <i>Amount Unlimited; Issuable in Series</i>	19
Section 3.02. <i>Denominations</i>	22
Section 3.03. <i>Execution, Authentication, Delivery and Dating</i>	22
Section 3.04. <i>Temporary Ordinary Senior Debt Securities</i>	23
Section 3.05. <i>Registration, Registration of Transfer and Exchange</i>	24
Section 3.06. <i>Mutilated, Destroyed, Lost and Stolen Ordinary Senior Debt Securities</i>	28
Section 3.07. <i>Payment; Interest Rights and Rights to Additional Amounts Preserved</i>	29
Section 3.08. <i>Persons Deemed Owners</i>	30
Section 3.09. <i>Cancellation</i>	32
Section 3.10. <i>Computation of Interest</i>	32
Section 3.11. <i>CUSIP Numbers</i>	32



Section 3.12. *Additional Ordinary Senior Debt Securities* 32  
Section 3.13. *Correction of Minor Defects in or Amendment of Ordinary Senior Debt Securities* 33  
Section 3.14. *Payments Subject to Fiscal Laws* 33

**ARTICLE 4**  
**SATISFACTION AND DISCHARGE**

Section 4.01. *Satisfaction and Discharge of Ordinary Senior Debt Securities Indenture* 33  
Section 4.02. *Defeasance and Covenant Defeasance* 35  
Section 4.03. *Application of Trust Money* 39  
Section 4.04. *Repayment to Company* 39  
Section 4.05. *Reinstatement* 39

**ARTICLE 5**  
**REMEDIES**

Section 5.01. *Events of Default* 39  
Section 5.02. *Acceleration of Maturity; Rescission and Annulment* 41  
Section 5.03. *Collection of Indebtedness and Suits for Enforcement by Trustee* 42  
Section 5.04. *Trustee May File Proofs of Claim* 43  
Section 5.05. *Trustee May Enforce Claims Without Possession of Ordinary Senior Debt Securities* 44  
Section 5.06. *Application of Money Collected* 44  
Section 5.07. *Limitation on Suits* 44  
Section 5.08. *Unconditional Right of Holders to Receive Principal, Premium and Interest, if Any and Additional Amounts* 45  
Section 5.09. *Restoration of Rights and Remedies* 45  
Section 5.10. *Rights and Remedies Cumulative* 46  
Section 5.11. *Delay or Omission Not Waiver* 46  
Section 5.12. *Control by Holders* 46  
Section 5.13. *Waiver of Past Defaults* 46  
Section 5.14. *Undertaking for Costs* 47

**ARTICLE 6**  
**THE TRUSTEE**

Section 6.01. *Certain Duties and Responsibilities* 47  
Section 6.02. *Spanish Tax Procedures and Obligations of the Trustee* 49  
Section 6.03. *Notice of Defaults* 49  
Section 6.04. *Certain Rights of Trustee* 49  
Section 6.05. *Not Responsible for Recitals or Issuance of Ordinary Senior Debt Securities* 51  
Section 6.06. *May Hold Ordinary Senior Debt Securities* 52  
Section 6.07. *Money Held in Trust* 52  
Section 6.08. *Compensation and Reimbursement* 52



Section 6.09.	<i>Disqualification; Conflicting Interests</i>	53
Section 6.10.	<i>Corporate Trustee Required; Eligibility</i>	53
Section 6.11.	<i>Resignation and Removal; Appointment of Successor</i>	54
Section 6.12.	<i>Acceptance of Appointment by Successor</i>	56
Section 6.13.	<i>Merger, Conversion, Consolidation or Succession Business</i>	57
Section 6.14.	<i>Preferential Collection of Claims</i>	57
Section 6.15.	<i>Appointment of Authenticating Agent</i>	57
Section 6.16.	<i>Appointment of Additional Trustees</i>	59
Section 6.17.	<i>Tax Withholding</i>	59

ARTICLE 7  
HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 7.01.	<i>Company to Furnish Trustee Names and Addresses of Holders</i>	59
Section 7.02.	<i>Preservation of Information; Communication to Holders</i>	60
Section 7.03.	<i>Reports by Trustee</i>	60
Section 7.04.	<i>Reports by the Company</i>	61

ARTICLE 8  
CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER

Section 8.01.	<i>Company May Consolidate, Etc. Only on Certain Terms</i>	62
Section 8.02.	<i>Successor Corporation Substituted</i>	62
Section 8.03.	<i>Assumption of Obligations</i>	63

ARTICLE 9  
SUPPLEMENTAL INDENTURES

Section 9.01.	<i>Supplemental Indentures without Consent of Holders</i>	64
Section 9.02.	<i>Supplemental Indentures with Consent of Holders</i>	65
Section 9.03.	<i>Execution of Supplemental Indentures</i>	66
Section 9.04.	<i>Effect of Supplemental Indentures</i>	67
Section 9.05.	<i>Conformity with Trust Indenture Act</i>	67
Section 9.06.	<i>Reference in Ordinary Senior Debt Securities to Supplemental Indentures</i>	67

ARTICLE 10  
COVENANTS

Section 10.01.	<i>Payment of Principal, Premium, and Interest</i>	67
Section 10.02.	<i>Maintenance of Office or Agency</i>	67
Section 10.03.	<i>Money for Payments to be Held in Trust</i>	68
Section 10.04.	<i>Additional Amounts</i>	69
Section 10.05.	<i>Corporate Existence</i>	72
Section 10.06.	<i>Statement as to Compliance</i>	72
Section 10.07.	<i>Original Issue Document</i>	72



200FX&=&eN4!zFas!

ARTICLE 11  
REDEMPTION OF ORDINARY SENIOR DEBT SECURITIES

Section 11.01.	<i>Applicability of Article</i>	73
Section 11.02.	<i>Election to Redeem; Notice to Trustee</i>	73
Section 11.03.	<i>Selection by Trustee of Ordinary Senior Debt Securities to be Redeemed</i>	73
Section 11.04.	<i>Notice of Redemption</i>	74
Section 11.05.	<i>Deposit of Redemption Price</i>	74
Section 11.06.	<i>Ordinary Senior Debt Securities Payable on Redemption Date</i>	75
Section 11.07.	<i>Ordinary Senior Debt Securities Redeemed in Part</i>	75
Section 11.08.	<i>Optional Redemption for Taxation Reasons</i>	75
Section 11.09.	<i>Repurchase of Ordinary Senior Debt Securities</i>	76
Section 11.10.	<i>Optional Early Redemption (Call)</i>	76
Section 11.11.	<i>Optional Early Redemption (Put)</i>	77

ARTICLE 12  
BAIL-IN AND RESOLUTION ACTIONS

Section 12.01.	<i>Agreement and Acknowledgement with Respect to the Exercise of the Bail-in Power</i>	77
----------------	--	----



ORDINARY SENIOR DEBT SECURITIES INDENTURE dated as of [●], between BANCO SANTANDER, S.A., a *sociedad anónima* incorporated under the laws of the Kingdom of Spain (the “**Company**”), having its principal executive office located at Ciudad Grupo Santander, Avenida de Cantabria s/n, 28660 Boadilla del Monte, Madrid, Spain, and THE BANK OF NEW YORK MELLON, acting through its London Branch, a banking corporation duly organized and existing under the laws of the State of New York as Trustee (the “**Trustee**”), having its Corporate Trust Office at One Canada Square, London, E14 5AL, United Kingdom.

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Ordinary Senior Debt Securities Indenture to provide for the issuance from time to time of its senior debt securities (the “**Ordinary Senior Debt Securities**”), to be issued in one or more series, represented by one or more Global Securities in registered form, or represented by definitive Ordinary Senior Debt Securities in registered form, the amount and terms of each such series to be determined as hereinafter provided.

All things necessary to make this Ordinary Senior Debt Securities Indenture a valid and binding agreement of the Company, in accordance with its terms, have been done.

This Ordinary Senior Debt Securities Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder that are required to be part of this Ordinary Senior Debt Securities Indenture and, to the extent applicable, shall be governed by such provisions.

NOW, THEREFORE, THIS SENIOR DEBT SECURITIES INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Ordinary Senior Debt Securities by the Holders (as herein defined) thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of Ordinary Senior Debt Securities of any series as follows:

ARTICLE 1  
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. *Definitions.* For all purposes of this Ordinary Senior Debt Securities Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;



(2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles and, except as otherwise herein expressly provided, the term “generally accepted accounting principles” with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the Kingdom of Spain at the date of such computation and as applied by the Company;

(4) the words “**herein**,” “**hereof**” and “**hereunder**” and other words of similar import refer to this Ordinary Senior Debt Securities Indenture as a whole and not to any particular Article, Section or other subdivision;

(5) any reference to an “**Article**” or a “**Section**” refers to an Article or Section of this Ordinary Senior Debt Securities Indenture; and

(6) the word “or” is always used inclusively (for example, the phrase “A or B” means “A or B or both”, not “either A or B but not both”).

Certain terms used principally in certain Articles hereof are defined in those Articles.

“**Act**”, when used with respect to any Holder, has the meaning set forth in Section 1.04.

“**Additional Amounts**” has the meaning set forth in Section 10.04.

“**Additional Ordinary Senior Debt Securities**” has the meaning set forth in Section 3.12.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “**control**” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing.

“**Agents**” means the agents appointed in accordance with this Ordinary Senior Debt Securities Indenture or applicable supplemental indenture;

“**Agent Member**” means a member of, or participant in, any Depository.

“**Amounts Due**” means the principal amount of, premium, if any, together with any accrued but unpaid interest, and Additional Amounts, if any, due on the Ordinary Senior Debt Securities of any series. References to such amounts will include amounts that have become due and payable, but which have not been paid, prior to the exercise of the Bail-in Power by the Relevant Resolution Authority.



“**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 Company and/or the Group including, without limitation to the generality of the foregoing, those regulations, requirements, guidelines and policies relating to capital adequacy, resolution and/or solvency then in effect of the Regulator (whether or not such requirements, guidelines or policies have the force of law and whether or not they are applied generally or specifically to Banco Santander and/or the Group).

“**Authenticating Agent**” means any Person authorized by the Trustee to act on behalf of the Trustee to authenticate Ordinary Senior Debt Securities.

“**Authorized Newspaper**” means a newspaper, in an official language of the place of publication or in the English language, customarily published on each day that is a Business Day in the place of publication, whether or not published on days that are Legal Holidays in the place of publication, and of general circulation in each place in connection with which the term is used or in the financial community of each such place. Where successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different newspapers in the same city meeting the foregoing requirements and in each case on any day that is a Business Day in the place of publication.

“**Bail-in Power**” means any statutory write-down and/or conversion power existing from time to time under any laws, regulations, rules or requirements in effect in the Kingdom of Spain relating to the resolution of Regulated Entities applicable to the Company or other Regulated Entities of the group, including (but not limited to) (i) the transposition of the BRRD (including but not limited to, Law 11/2015, Royal Decree 1012/2015 and any other implementing regulations) as amended or superseded from time to time, (ii) Regulation (EU) No. 806/2014 of the European Parliament and of 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 superseded from time to time, the “**SRM Regulation**”) and (iii) the instruments, rules and standards created thereunder, pursuant to which any obligation of a Regulated Entity (or an affiliate of such Regulated Entity) can be reduced, cancelled and/or converted into shares or other securities or obligations of such Regulated Entity (or affiliate of such Regulated Entity) or any other person.

“**Board of Directors**” means either the board of directors of the Company or any committee or Person duly authorized to act generally or in any particular respect for the Company hereunder.

“**Board Resolution**” means a copy of a resolution certified by the Secretary or an Assistant Secretary or any Person duly authorized by the Company to have been duly adopted by the relevant Board of Directors or an authorized committee thereof and to be in full force and effect on the date of such certification and delivered to the Trustee.





“**BRRD**” means Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, as amended or superseded from time to time.

“**Business Day**” means, unless otherwise provided in the form of Ordinary Senior Debt Securities for any particular series pursuant to the provisions of this Ordinary Senior Debt Securities Indenture, any day, other than Saturday or Sunday, that is neither a Legal Holiday nor a day on which banking institutions are authorized or required by law, regulation or executive order to close in the City of New York, London, Madrid or any other place or places where the principal of, or any premium or interest on, or any Additional Amounts with respect to the Ordinary Senior Debt Securities of that series are payable.

“**Calculation Agent**” means the Trustee or such other person authorized by the Company as the party responsible for calculating the rate(s) of interest and interest amount(s) and/or such other amount(s) from time to time in relation to any series of Ordinary Senior Debt Securities.

“**Commission**” means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“**Company**” means the Person named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Ordinary Senior Debt Securities Indenture, and thereafter “Company” shall mean such successor Person.

“**Company Request**” and “**Company Order**” mean, respectively, a written request or order, as the case may be, signed in the name of the Company by any member of the Board of Directors or any officer or representative of the Company empowered to do so by Board Resolution, and delivered to the Trustee.

“**Conversion Event**” means the cessation of use of (i) a Foreign Currency both by the government of the country which issued such currency and for the settlement of transactions by a central bank or other public institutions of or within the international banking community, or (ii) the euro both within the European monetary system and for the settlement of transactions by public institutions of or within the European Union.

“**Corporate Trust Office**” means the office of the Trustee at which its corporate trust business in London, England, is principally administered, which office as of the date hereof is located at One Canada Square, London E14 5AL (Attention: Corporate Trust Administration, facsimile: +44 20 7964 2536) or, if a different Trustee is appointed for a particular series of Ordinary Senior Debt Securities, the address set forth in the supplemental indenture naming the Trustee for that particular series of Ordinary Senior Debt Securities.



The term “**corporation**” includes corporations, associations, companies, partnerships and business trusts.

“**Default Interest**” has the meaning set forth in Section 3.07.

“**Depository**” means, with respect to any series of Ordinary Senior Debt Securities, a clearing agency that is designated to act as Depository for the Global Securities evidencing all or part of such Ordinary Senior Debt Securities as contemplated by Section 3.05.

“**dollar**” or “**\$**” or any similar reference means the coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

“**DTC**” means The Depository Trust Company or its nominee or its or their successor.

“**Early Redemption Amount (Call)**” has the meaning set forth in Section 11.10.

“**Early Redemption Amount (Put)**” has the meaning set forth in Section 11.11.

“**Early Redemption Amount (Tax)**” has the meaning set forth in Section 11.08.

“**euro**” or “**€**” means the currency of the member states of the European Union (“**EU**”) that, from time to time, have adopted the single currency in accordance with the treaty establishing the European Community, as amended from time to time.

“**Event of Default**” has the meaning set forth in Section 5.01.

“**Exchange Act**” means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the Commission thereunder.

“**Foreign Currency**” means the euro or any currency issued by the government of any country (or a group of countries or participating member states) other than the United States which as at the time of payment is legal tender for the payment of public and private debts.

“**Foreign Government Securities**” means, with respect to Ordinary Senior Debt Securities of any series that are denominated in a Foreign Currency, non-callable (i) direct obligations of the participating member state or government that issued such Foreign Currency for the payment of which obligations its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of such participating member state or government, the payment of which obligations is unconditionally guaranteed as a full faith and credit obligation of such participating member state or government. For the avoidance of doubt, for all purposes hereof, euro shall be deemed to have been issued by each participating member state from time to time.



“**Global Security**” means one or more global certificates evidencing all or part of a series of Ordinary Senior Debt Securities, authenticated and delivered to or on behalf of the Holder and registered in the name of the Holder or its nominee.

“**Group**” means Banco Santander, S.A. and its consolidated subsidiaries.

“**Holder**” means a Person in whose name a Senior Debt Security in global or definitive form is registered in the Senior Debt Security Register.

“**Independent Public Accountants**” means accountants or a firm of accountants that, with respect to the Company and any other obligor under the Ordinary Senior Debt Securities, are independent public accountants within the meaning of the Securities Act of 1933, as amended, and the rules and regulations promulgated by the Commission thereunder, who may be the independent public accountants regularly retained by the Company or who may be other independent public accountants.

“**Interest Payment Date**”, when used with respect to any Senior Debt Security, means the Stated Maturity of any installment of interest on such Senior Debt Security.

“**Law 11/2015**” means Law 11/2015, of June 18, for the recovery and resolution of credit institutions and investment firms (*Ley 11/2015, de 18 de junio, de recuperacion y resolucion de entidades de credito y empresas de servicios de inversion*), as amended from time to time.

“**Legal Holiday**”, with respect to any Place of Payment or other location, means a Saturday, a Sunday or a day on which banking institutions in such Place of Payment or other location are not authorized or obligated to be open.

“**Losses**” means any and all claims, losses, liabilities, damages, costs, expenses and judgments (including legal fees and expenses) sustained by the Company or the Trustee.

“**Maturity**”, when used with respect to any Senior Debt Security, means the date, if any, on which the principal or any installment of principal of such Senior Debt Security becomes due and payable as therein or herein provided, whether by call for redemption, repurchase, declaration of acceleration or otherwise.

“**Officer’s Certificate**” means a certificate signed by any member of the Board of Directors, the Secretary or the Deputy Secretary of the Board of Directors, a Vice President or any officer or any other Person duly authorized by the Company that complies with the requirements of Section 314(e) of the Trust Indenture Act and is delivered to the Trustee.

“**Opinion of Counsel**” means a written opinion of legal advisors, who may be an employee of or legal advisors for the Company or other legal advisors who shall be reasonably acceptable to the Trustee and that, if required by the Trust Indenture Act, complies therewith.



“**Ordinary Senior Debt Securities**” has the meaning set forth in the recitals herein and more particularly means any series of Ordinary Senior Debt Securities issued, authenticated and delivered under this Ordinary Senior Debt Securities Indenture.

“**Ordinary Senior Debt Securities Indenture**” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms and forms of particular series of Ordinary Senior Debt Securities established pursuant to Section 3.01.

“**Original Issue Discount Security**” means any Senior Debt Security which provides for an amount less than the principal amount, to be due and payable upon maturity thereof.

“**Outstanding**”, when used with respect to Ordinary Senior Debt Securities or any series of Ordinary Senior Debt Securities means (except as otherwise specified pursuant to Section 3.01), as of the date of determination, all Ordinary Senior Debt Securities or all Ordinary Senior Debt Securities of such series, as the case may be, theretofore authenticated and delivered under this Ordinary Senior Debt Securities Indenture, *except*:

- (i) Ordinary Senior Debt Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- (ii) Ordinary Senior Debt Securities, or portions thereof, for whose payment or redemption money, U.S. Government Obligations or Foreign Government Securities in the necessary amount have been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Ordinary Senior Debt Securities; *provided*, that, if such Ordinary Senior Debt Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Ordinary Senior Debt Securities Indenture or provision therefor satisfactory to the Trustee has been made;
- (iii) any such Senior Debt Security with respect to which the Company has effected defeasance pursuant to the terms hereof, except to the extent provided in Section 4.02; and
- (iv) Ordinary Senior Debt Securities which have been paid pursuant to Section 11.06 or in exchange for or in lieu of which other Ordinary Senior Debt Securities have been authenticated and delivered pursuant to this Ordinary Senior Debt Securities Indenture, other than any such Ordinary Senior Debt Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Ordinary Senior Debt Securities are held by a bona fide purchaser in whose hands such Ordinary Senior Debt Securities are valid obligations of the Company;



*provided, however*, that in determining whether the Holders of the requisite principal amount of the Outstanding Ordinary Senior Debt Securities of any series have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (i) the principal amount of a Senior Debt Security denominated in a Foreign Currency shall be the dollar equivalent, determined on the date of original issuance of such Senior Debt Security, of the principal amount of such Senior Debt Security; and (ii) Ordinary Senior Debt Securities beneficially owned by the Company or any other obligor upon the Ordinary Senior Debt Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Ordinary Senior Debt Securities for which a Responsible Officer of the Trustee has received an Officer's Certificate stating that such Ordinary Senior Debt Securities are so beneficially owned shall be so disregarded; *provided, further, however*, that Ordinary Senior Debt Securities so beneficially owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Ordinary Senior Debt Securities and that the pledgee is not the Company or any other obligor upon the Ordinary Senior Debt Securities or any Affiliate of the Company or of such other obligor.

**"Paying Agent"** means any Person (which may include the Company) authorized by the Company to pay the principal of, or any premium or interest on, or any Additional Amounts with respect to, any Ordinary Senior Debt Securities on behalf of the Company. Except as otherwise specified as contemplated by Section 3.01 hereof, The Bank of New York Mellon, acting through its London Branch will act as Paying Agent in respect of the Ordinary Senior Debt Securities of any series.

**"Payment Statement"** means the statement to be delivered to the Company by the Trustee, substantially in the form set forth in Exhibit I to Appendix I, pursuant to Section 6.02.

**"Person"** means any individual, company, corporation, firm, partnership, joint venture, association, organization, state or agency of a state or other entity, whether or not having separate legal personality.

**"Place of Payment"**, when used with respect to the Ordinary Senior Debt Securities of any series, means the place or places where the principal of, or any premium or interest on, or any Additional Amounts with respect to the Ordinary Senior Debt Securities of that series are payable as specified pursuant to Section 3.01 or, if not so specified, as specified in Section 10.02.

**"Predecessor Security"** of any particular Senior Debt Security means every previous Senior Debt Security evidencing all or a portion of the same debt as that evidenced by such particular Senior Debt Security; and, for the purposes of this definition, any Senior Debt Security authenticated and delivered under Section 3.06 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Senior Debt Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Senior Debt Security.



“**Redemption Date**”, when used with respect to any Senior Debt Security to be redeemed, means the date fixed for such redemption by or pursuant to this Ordinary Senior Debt Securities Indenture.

“**Redemption Price**”, when used with respect to any Senior Debt Security to be redeemed, means the price at which it is to be redeemed pursuant to this Ordinary Senior Debt Securities Indenture, which shall include the Early Redemption Amount (Tax), Early Redemption Amount (Call) or Early Redemption Amount (Put), as applicable.

“**Record Date**” for the interest payable on any Interest Payment Date on Ordinary Senior Debt Securities of any series means the date specified for the purpose pursuant to Section 3.01.

“**Regulated Entity**” means any legal person to which BRRD, as implemented in the Kingdom of Spain (including but not limited to, Law 11/2015, Royal Decree 1012/2015 and any other implementing regulations) as amended or superseded from time to time), the SRM Regulation, or any other Spanish law relating to Bail-in Power, applies, which includes, certain credit entities, investment firms, and certain parent or holding companies.

“**Regulator**” means the European Central Bank or such other or successor authority exercising primary bank supervisory authority, in each case with respect to prudential matters in relation to the Group.

“**Relevant Resolution Authority**” means the Spanish Fund for the Orderly Restructuring of Banks or the European Single Resolution Mechanism, as the case may be, according to Law 11/2015, and any other entity with the authority to exercise the Bail-in Power or any other resolution power from time to time.

“**Responsible Officer**”, when used with respect to the Trustee, means any officer of the Trustee assigned to or working in the Corporate Trust Administration unit (or any successor unit) of the Trustee located at the Corporate Trust Office of the Trustee, who shall have direct responsibility for the administration of this Ordinary Senior Debt Securities Indenture and, for purposes of Section 6.01(c)(ii), shall also include any other officer of the Trustee to whom any corporate trust matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“**Second Ranking Senior Debt Securities**” means direct, unsubordinated and unsecured obligations (*créditos ordinarios*) of the Company which, by law and/or by their terms, rank junior to other unsubordinated and unsecured obligations (*créditos ordinarios*) of the Company, including the Ordinary Senior Debt Securities.

“**Senior Debt Security**” means one of the Ordinary Senior Debt Securities.



“**Senior Debt Security Register**” and “**Senior Debt Security Registrar**” have the respective meanings specified in Section 3.05.

“**Senior Securities**” means Ordinary Senior Debt Securities or any other unsecured and unsubordinated debt securities (*créditos ordinarios*) issued by the Company.

“**Spanish Insolvency Law**” means Law 22/2003 (*Ley Concursal*) of 9 July 2003 regulating insolvency proceedings in Spain, or an equivalent legal provision which replaces it in the future.

“**Special Record Date**”, when used for the payment of any Default Interest on Ordinary Senior Debt Securities of any series, means the date specified by the Company for the purpose pursuant to Section 3.07.

“**SRM Regulation**” means Regulation (EU) No. 806/2014 of the European Parliament and of 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 superseded from time to time.

“**Stated Maturity**”, when used with respect to any Senior Debt Security or any installment of principal thereof or interest thereon, means the date or dates, if any, specified in, or determined in accordance with the terms of, such Senior Debt Security, including as the same may be modified pursuant to the Bail-in Power set forth in Article 13, as the fixed date or dates on which the principal of such Senior Debt Security or such installment of principal or interest (and Additional Amounts, if any) is due and payable.

“**Subsidiary**” means any entity over which the Company may have, directly or indirectly, control in accordance with Applicable Banking Regulations;

“**Trustee**” means the Person named as the “**Trustee**” in the first paragraph of this instrument until a successor trustee shall have become such pursuant to the applicable provisions of this Ordinary Senior Debt Securities Indenture, and thereafter “**Trustee**” shall mean the Person who is then the Trustee hereunder, or, if a different Trustee is appointed for a particular series of Ordinary Senior Debt Securities, the Trustee named in the relevant indenture supplemental hereto as the Trustee for that particular series of Ordinary Senior Debt Securities and if at any time there is more than one such Person, “**Trustee**” shall mean and include each such Person; and “**Trustee**” as used with respect to the Ordinary Senior Debt Securities of any series shall mean the Trustee with respect to the Ordinary Senior Debt Securities of such series.

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as in effect at the date as of which this instrument was executed, except as provided in Section 9.05.

“**United States**” and “**U.S.**” mean the United States of America and, except in the case of Section 6.10 and Section 6.14, its territories and possessions.



“**U.S. Government Obligations**” means securities that are noncallable and nonredeemable at the option of the issuer and that are (i) direct obligations of the United States for which its full faith and credit are pledged and/or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States, the payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act of 1933, as amended), which may include the Trustee, as custodian with respect to any such U.S. Government Obligation or a specific payment of principal of or interest on any such U.S. Government Obligation held by such custodian for the account of the holder of such depository receipt, *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal of or interest on or other amount with respect to the U.S. Government Obligation evidenced by such depository receipt.

Section 1.02. *Compliance Certificates and Opinions.* Unless otherwise expressly provided for in this Ordinary Senior Debt Securities Indenture, upon any application or request by the Company to the Trustee to take any action under any provision of this Ordinary Senior Debt Securities Indenture, the Company shall furnish to the Trustee an Officer’s Certificate stating that all conditions precedent, if any, provided for in this Ordinary Senior Debt Securities Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of the legal advisor rendering such opinion all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Ordinary Senior Debt Securities Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Ordinary Senior Debt Securities Indenture (other than Section 10.06) shall include:

(a) a statement that each Person signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of each such Person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such Person, such condition or covenant has been complied with.





Section 1.03. *Form of Documents Delivered to Trustee.* In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, legal advisors, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion or representations are based are erroneous. Any such certificate or opinion of, or representations by, legal advisors may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company, as the case may be, stating that the information with respect to such factual matters is in the possession of the Company, unless such legal advisors know, or in the exercise of reasonable care should know, that the certificate or opinion or representation with respect to such matters is erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Ordinary Senior Debt Securities Indenture, they may, but need not, be consolidated and form one instrument.

Section 1.04. *Acts of Holders.* (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Ordinary Senior Debt Securities Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, when it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “**Act**” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Ordinary Senior Debt Securities Indenture and (subject to Section 6.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. When such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.



(c) The ownership of Ordinary Senior Debt Securities shall be proved by the Senior Debt Security Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Senior Debt Security shall bind every future Holder of the same Senior Debt Security and the Holder of every Senior Debt Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee, any Senior Debt Security Registrar, any Paying Agent, any Authenticating Agent, the Company in reliance thereon, whether or not notation of such action is made upon such Senior Debt Security or such other Senior Debt Security.

(e) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a Board Resolution or an Officer's Certificate, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Outstanding Ordinary Senior Debt Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Ordinary Senior Debt Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Ordinary Senior Debt Securities Indenture not later than six months after the record date.

Section 1.05. *Notices, Etc. to Trustee or Company.* Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Ordinary Senior Debt Securities Indenture to be made upon, given or furnished to, or filed with,

(a) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if made, given, furnished or filed in writing (which may be via facsimile or email delivery of a copy of such a document) to the Trustee at its Corporate Trust Office and the Trustee agrees to accept and act upon facsimile transmission or email delivery of written instructions pursuant to this Ordinary Senior Debt Securities Indenture; provided, however, that (x) the party providing such written instructions, subsequent to such transmission of written instructions, shall provide the originally executed instructions or directions to the Trustee in a timely manner, and (y) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions; or



(b) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class air mail postage prepaid, to the Company, to the address of its principal office specified in the first paragraph of this Ordinary Senior Debt Securities Indenture or at any other address previously furnished in writing to the Trustee by the Company.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Ordinary Senior Debt Securities Indenture sent by unsecured e-mail, portable document format (PDF), facsimile transmission or other similar unsecured electronic methods, provided, however, that the Trustee shall have received from the Company an incumbency certificate listing persons designated to give such instructions or directions and containing the titles and specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing, and provided further that the Trustee shall have no obligation or responsibility to confirm or verify that the instruction or direction was in fact sent by, or on behalf of, a person so designated to give instructions or directions. If the Company elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding a conflict or inconsistency between such instructions and a subsequent written instruction. The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 1.06. *Notice to Holders; Waiver.* When this Ordinary Senior Debt Securities Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if given in writing and mailed, first-class postage prepaid, to each Holder of a Senior Debt Security affected by such event in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act with respect to reports pursuant to Section 7.03(a).

For so long as the Ordinary Senior Debt Securities of any series are represented by Global Securities, the Company will deliver a copy of all notices with respect to such series to the Holder (if the address of such Holder is known to the Company).

When notice to Holders of Ordinary Senior Debt Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Ordinary Senior Debt Securities Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers



of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 1.07. *Language of Notices, Etc.* Any notice under this Ordinary Senior Debt Securities Indenture shall be in the English language, except that, if the Company so elects, any published notice may be in an official language of the country of publication.

Section 1.08. *Conflict with Trust Indenture Act.* If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this Ordinary Senior Debt Securities Indenture by any of the provisions of the Trust Indenture Act, such required provision of the Trust Indenture Act shall control. If at any future time any provision required to be included herein by the Trust Indenture Act as in force at the date as of which this Ordinary Senior Debt Securities Indenture was executed or any limitation imposed by the Trust Indenture Act at such date on any provision otherwise included herein would not be so required or imposed (in whole or in part) if this Ordinary Senior Debt Securities Indenture were executed at such future time, the Company and the Trustee may enter into one or more indentures supplemental hereto pursuant to Section 9.01 to change or eliminate (in whole or in part) such provision or limitation of this Ordinary Senior Debt Securities Indenture in conformity with the requirements of the Trust Indenture Act as then in force, except that (subject to Article 9) no provision or limitation required to be included herein by Sections 310(a)(1) and (a)(2), 315(a), (c), (d)(1), (d)(2), (d)(3) and (e), 316(a)(1)(A), (a)(1)(B), (a)(2), (a) (last sentence) and (b) of the Trust Indenture Act as in force at the date as of which this Ordinary Senior Debt Securities Indenture was executed may be so changed or eliminated.

Section 1.09. *Effect of Headings and Table of Contents.* The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.10. *Successors and Assigns.* All covenants and agreements in this Ordinary Senior Debt Securities Indenture by the Company shall bind its respective successors and assigns, whether so expressed or not.

Section 1.11. *Separability Clause.* In case any provision in this Ordinary Senior Debt Securities Indenture or in the Ordinary Senior Debt Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.12. *Benefits of Ordinary Senior Debt Securities Indenture.* Nothing in this Ordinary Senior Debt Securities Indenture or in the Ordinary Senior Debt Securities, express or implied, shall give to any Person, other than the parties hereto and any Ordinary Senior Debt Securities Registrars or any Paying Agent or Calculation Agent with respect to any Ordinary Senior Debt Securities and their successors hereunder, and the Holders of Ordinary Senior Debt Securities, any benefit or any legal or equitable right, remedy or claim under this Ordinary Senior Debt Securities Indenture.



200FX&=eNJczthsp

Section 1.13. *Governing Law.* This Ordinary Senior Debt Securities Indenture and the Ordinary Senior Debt Securities shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the choice of law provisions, except for Section 2.02, which shall be governed by and construed in accordance with the laws of Spain and except that the authorization and execution of this Ordinary Senior Debt Securities Indenture and the Ordinary Senior Debt Securities shall be governed by (in addition to the laws of the State of New York relevant to execution) the respective jurisdictions of organization of the Company and the Trustee, as the case may be.

Section 1.14. *Business Days and Legal Holidays.* The terms of the Ordinary Senior Debt Securities shall provide that, in any case where any Interest Payment Date, Redemption Date, Maturity or Stated Maturity, of a Senior Debt Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Ordinary Senior Debt Securities Indenture or the Ordinary Senior Debt Securities other than a provision in the Ordinary Senior Debt Securities that specifically states that such provision shall apply in lieu of this Section) payments of interest, if any (and premium, if any) or principal and the exchange of the Senior Debt Security need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment (or such other Business Day as shall be provided in such Senior Debt Security) with the same force and effect as if made on such Interest Payment Date, Redemption Date, Maturity or Stated Maturity, *provided* that no interest shall accrue on such payment for the period from and after such Interest Payment Date, Redemption Date, Maturity or Stated Maturity, as the case may be.

Section 1.15. *Appointment of Agent for Service.* The Company has designated and appointed Banco Santander, S.A., New York Branch, 45 E. 53<sup>rd</sup> Street, New York, New York 10022, as its authorized agent (the "Authorized Agent") upon which process may be served in any suit or proceeding in any Federal or State court in the Borough of Manhattan, The City of New York arising out of or relating to the Ordinary Senior Debt Securities or this Ordinary Senior Debt Securities Indenture, but for that purpose only, and agrees that service of process upon said Authorized Agent shall be deemed in every respect effective service of process upon it in any such suit or proceeding in any Federal or State court in the Borough of Manhattan, The City of New York, New York. Such appointment shall be irrevocable so long as any of the Ordinary Senior Debt Securities remain Outstanding until the appointment of a successor by the Company and such successor's acceptance of such appointment. Upon such acceptance, the Company shall notify the Trustee of the name and address of such successor. The Company further agrees to take any and all action, including the execution and filing of any and all such documents and instruments, as may be necessary to continue such designation and appointment of said Authorized Agent in full force and effect so long as any of the Ordinary Senior Debt Securities shall be Outstanding. The Trustee shall not be obligated and shall have no responsibility with respect to any failure by the Company to take any such action. The Company hereby irrevocably submits (for the purposes of any such suit or proceeding) to the non-exclusive jurisdiction of any such court in which any such suit or proceeding is so instituted, and waives, to the extent it may effectively do so, any



objection it may have now or hereafter to the laying of the venue of any such suit or proceeding. To the extent that the Company may be entitled, in any jurisdiction in which judicial proceedings may at any time be commenced with respect to or arising out of this Ordinary Senior Debt Securities Indenture to claim for itself or its revenues, assets or properties immunity (whether by reason of sovereign immunity or otherwise) from suit, from the jurisdiction of any court (including, but not limited to, any court of the United States of America or the State of New York) or from any legal process with respect to itself or its property, from attachment prior to judgment, from set-off, from execution of a judgment, from the grant of injunctive relief, whether prior to or after judgment, or from any other legal process (including, without limitation, in relation to enforcement of any arbitration award), and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), the Company hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity and consents to the grant of any such relief.

Section 1.16. *Calculation Agent.* If the Company appoints a Calculation Agent pursuant to Section 3.01 with respect to any series of Ordinary Senior Debt Securities, any determination of the interest rate on, or other amounts in relation to, such series of Ordinary Senior Debt Securities in accordance with the terms of such series of Ordinary Senior Debt Securities by such Calculation Agent shall (in the absence of manifest error, bad faith or willful misconduct) be binding on the Company, the Trustee and all Holders and (in the absence of manifest error, bad faith or willful misconduct) no liability to the Holders shall attach to the Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions.

Section 1.17. *Waiver of Jury Trial.* EACH OF THE PARTIES HERETO, AND EACH HOLDER OF A SENIOR DEBT SECURITY BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SENIOR DEBT SECURITIES INDENTURE, THE SENIOR DEBT SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 1.18. *Judgment Currency.* Any payment on account of an amount that is payable in U.S. dollars (the “**Required Currency**”) which is made to or for the account of any Holder or the Trustee in lawful currency of any other jurisdiction (the “**Judgment Currency**”), whether as a result of any judgment or order or the enforcement thereof or the liquidation of the Company shall constitute a discharge of the Company obligation under this Ordinary Senior Debt Securities Indenture and the Ordinary Senior Debt Securities only to the extent of the amount of the Required Currency such Holder or the Trustee, as the case may be, could purchase in the London foreign exchange markets with the amount of the Judgment Currency in accordance with normal banking procedures at the rate of exchange prevailing on the first Business Day following receipt of the payment in the Judgment Currency. If the amount of the Required Currency that could be so purchased is less than the amount of the Required Currency originally due to such Holder or the Trustee, as the case may be, the Company shall indemnify and hold harmless the Holder or the Trustee, as the case may be, from and against all loss or



damage arising out of, or as a result of, such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Ordinary Senior Debt Securities Indenture or the Ordinary Senior Debt Securities, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by any Holder or the Trustee from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due hereunder or under any judgment or order.

## ARTICLE 2 SENIOR DEBT SECURITY FORMS

Section 2.01. *Forms Generally.* The Ordinary Senior Debt Securities of each series shall be issuable in registered form and in such forms as shall be established by or pursuant to a Board Resolution of the Company, or an Officer's Certificate, or in one or more indentures supplemental hereto, pursuant to Section 3.01, in each case with such insertions, omissions, substitutions and other variations as are required or permitted by this Ordinary Senior Debt Securities Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with any applicable law or rule or regulation made pursuant thereto or with the rules of any securities exchange or Depository therefor, or as may, consistently herewith, be determined by the officers executing such Ordinary Senior Debt Securities, all as evidenced by any such execution.

Any definitive Ordinary Senior Debt Securities shall be printed, lithographed or engraved or produced by any combination of these methods or may be produced in any other manner permitted by the rules of any securities exchange on which the Ordinary Senior Debt Securities may be listed, all as determined by the officers executing such Ordinary Senior Debt Securities, as evidenced by their execution thereof.

Section 2.02. *Status of the Ordinary Senior Debt Securities.* The payment obligations of the Company under the Ordinary Senior Debt Securities of any series constitute on account of principal direct, unconditional, unsubordinated and unsecured obligations (*créditos ordinarios*) of the Company and, upon the insolvency of the Company (and unless they qualify as subordinated claims (*créditos subordinados*) pursuant to Article 92.1° or 92.3° to 92.7° of the Spanish Insolvency Law), but subject to any other ranking that may apply as a result of any mandatory provision of law (or otherwise), rank *pari passu* and rateably without preference among themselves and with all other unsecured and unsubordinated indebtedness (*créditos ordinarios*) of the Company, present or future (other than Second Ranking Senior Debt Securities and claims which, by law and/or by their terms rank *pari passu* with the Company's obligations under its Second Ranking Senior Debt Securities) and senior to any present and future subordinated obligations (*créditos subordinados*) of the Company.

Claims of Holders of Ordinary Senior Debt Securities of any series in respect of interest accrued but unpaid as of the commencement of any insolvency procedure in respect of the Company shall constitute subordinated claims (*créditos subordinados*) against the Company ranking in accordance with the provisions of Article 92.3° of the Spanish Insolvency Law and no further interest shall accrue from the date of the declaration of insolvency of the Company.



Section 2.03. *Form of Trustee's Certificate of Authentication.* The Trustee's certificate of authentication shall be in substantially the following form.

CERTIFICATE OF AUTHENTICATION

This is one of the Ordinary Senior Debt Securities of the series designated herein referred to in the within-mentioned Ordinary Senior Debt Securities Indenture.

Dated: \_\_\_\_\_

THE BANK OF NEW YORK MELLON, as Trustee

By: \_\_\_\_\_

Authorized Signatory

ARTICLE 3

THE ORDINARY SENIOR DEBT SECURITIES

Section 3.01. *Amount Unlimited; Issuable in Series.* The aggregate principal amount of Ordinary Senior Debt Securities which may be authenticated and delivered under this Ordinary Senior Debt Securities Indenture is unlimited. The Ordinary Senior Debt Securities may be issued in one or more series.

There shall be established by or pursuant to a Board Resolution of the Company or established by an Officer's Certificate or established in one or more indentures supplemental hereto, prior to the initial issuance of Ordinary Senior Debt Securities of any series:

(a) the title of the Ordinary Senior Debt Securities of the series (which shall distinguish the Ordinary Senior Debt Securities of the series from all other Ordinary Senior Debt Securities);

(b) the price or prices (expressed as a percentage of the principal amount thereof) at which the Ordinary Senior Debt Securities of the series shall be issued;

(c) any limit upon the aggregate principal amount of the Ordinary Senior Debt Securities of the series which may be authenticated and delivered under this Ordinary Senior Debt Securities Indenture (except for Ordinary Senior Debt Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Ordinary Senior Debt Securities of the series pursuant to Section 3.04, Section 3.05, Section 3.06, Section 9.06 or Section 11.07 and except for any Ordinary Senior Debt Securities which, pursuant to Section 3.03 are deemed never to have been authenticated and delivered hereunder);





200FX&=8eN44njls0

(d) the date or dates, if any, on which the principal of (and premium, if any, on) the Ordinary Senior Debt Securities of the series is payable;

(e) the rate or rates, if any, at which the Ordinary Senior Debt Securities of the series shall accrue interest or the manner of calculation of such rate or rates, if any, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable or the manner of determination of such Interest Payment Dates, if other than as specified in Section 3.07 and the Regular Record Date for the interest payable on any Interest Payment Date and any dates required to be established pursuant to Section 7.01;

(f) whether any premium, upon redemption or otherwise, shall be payable by the Company on Ordinary Senior Debt Securities of the series, and whether such premium shall be redeemable at the option of the Company or the Holder;

(g) the place or places where the principal of (and premium, if any) and any interest on Ordinary Senior Debt Securities of the series shall be payable, and the Paying Agent or Paying Agents who shall be authorized to pay principal of (and premium, if any) and interest on Ordinary Senior Debt Securities of such series, at least one of such Paying Agents having an office or agency in the Borough of Manhattan, The City of New York;

(h) other than with respect to any redemption of the Ordinary Senior Debt Securities pursuant to Section 11.08, whether or not such series of Ordinary Senior Debt Securities are to be redeemable, in whole or in part, at the Company's option and, if so redeemable, the period or periods within which, the price or prices at which and the terms and conditions upon which, Ordinary Senior Debt Securities of the series may be redeemed, including the date referred to in Section 11.08;

(i) the obligation, if any, of the Company to redeem or purchase Ordinary Senior Debt Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which, and the terms and conditions upon which Ordinary Senior Debt Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(j) if other than denominations of \$1,000 and any multiple thereof, the denominations in which Ordinary Senior Debt Securities of the series in each applicable form shall be issuable;

(k) if other than the full principal amount thereof, the portion, or the manner of calculation of such portion, of the principal amount of Ordinary Senior Debt Securities of the series which shall be payable upon a declaration of acceleration or acceleration of the Maturity thereof pursuant to Section 5.02, upon redemption of Ordinary Senior Debt Securities of any series which are redeemable before their Stated Maturity, or which the Trustee shall be entitled to file and prove a claim pursuant to Section 5.04;

(l) if Additional Amounts, pursuant to Section 10.04, will not be payable;



(m) the terms, if any, on which such Ordinary Senior Debt Securities may or shall be converted into or exchanged at the option of the Company or otherwise for stock or other securities of the Company or another entity or other entities, into a basket or baskets of such securities, into an index or indices of such securities, into the cash value therefor or into any combination of the foregoing, any specific terms relating to the adjustment thereof and the period during which such Ordinary Senior Debt Securities may or shall be so converted or exchanged;

(n) if other than dollars, provisions, if any, for the Ordinary Senior Debt Securities of the series to be denominated, and payments thereon to be made, in Foreign Currencies and specifying the manner and Place of Payment thereon and any other terms with respect thereto;

(o) if other than the coin or currency in which the Ordinary Senior Debt Securities of that series are denominated, the coin or currency in which payment of the principal of (and premium, if any) or interest, if any, on the Ordinary Senior Debt Securities of such series shall be payable;

(p) if the principal of (and premium, if any) or interest, if any, on the Ordinary Senior Debt Securities of such series are to be payable, at the election of the Company or a Holder thereof, in a coin or currency other than that in which the Ordinary Senior Debt Securities are denominated, the period or periods within which, and the terms and conditions upon which, such election may be made;

(q) whether the Ordinary Senior Debt Securities of the series shall be issued in whole or in part in the form of one or more Global Securities and the initial Holder with respect to such Global Security or Ordinary Senior Debt Securities;

(r) if the Ordinary Senior Debt Securities of such series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Senior Debt Security of such series or otherwise) only upon receipt of certain certificates or other documents or satisfaction of other conditions, then the form and terms of such certificates, documents or conditions;

(s) if the amounts of payments of principal of (and premium, if any) or interest, if any, on the Ordinary Senior Debt Securities of the series may be determined with reference to an index or are otherwise not fixed on the original issue date thereof, the manner in which such amounts shall be determined and the Calculation Agent, if any, who shall be appointed and authorized to calculate such amounts;

(t) any other Events of Default or covenants with respect to the Ordinary Senior Debt Securities of such series and, if other than as specified in this Ordinary Senior Debt Securities Indenture, the terms thereof;

(u) the forms of Ordinary Senior Debt Securities of the series;



(v) any other terms of the series (which terms shall not be inconsistent with the provisions of this Ordinary Senior Debt Securities Indenture, except as permitted by Section 9.01(d)); and

(w) the Trustee for such series of Ordinary Senior Debt Securities who shall also be named in an indenture supplemental hereto for a particular series of Ordinary Senior Debt Securities if the Trustee for such series is not the Trustee named in the first paragraph of this Ordinary Senior Debt Securities Indenture.

All Ordinary Senior Debt Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to such action or in any such Officer's Certificate or indenture supplemental hereto.

If the forms of Ordinary Senior Debt Securities of any series, or any of the terms thereof, are established by action taken pursuant to a Board Resolution, a copy of the Board Resolution in respect thereof shall be delivered to the Trustee at or prior to the delivery of the Company Order pursuant to Section 3.03 for the authentication and delivery of such Ordinary Senior Debt Securities.

Section 3.02. *Denominations.* The Ordinary Senior Debt Securities of each series shall be issuable in such denominations as shall be specified as contemplated by Section 3.01. In the absence of any such specification with respect to Ordinary Senior Debt Securities of any series, the Ordinary Senior Debt Securities of each series shall be issuable in denominations of \$1,000 each and any integral multiple thereof. Unless otherwise specified in accordance with Section 3.01, any Global Security issued and delivered to the Holder shall be issued in the form of units with each \$1,000 principal amount of such Global Security constituting one unit.

Section 3.03. *Execution, Authentication, Delivery and Dating.* The Ordinary Senior Debt Securities shall be executed on behalf of the Company by any one of the representatives of the Company authorized to do so by Board Resolution or by any member of the Board of Directors. The signature of any of these authorized representatives on the Ordinary Senior Debt Securities may be manual or facsimile. Ordinary Senior Debt Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officer of the Company shall bind the Company, notwithstanding that such individual has ceased to hold such office prior to the authentication and delivery of such Ordinary Senior Debt Securities.

At any time and from time to time after the execution and delivery of this Ordinary Senior Debt Securities Indenture, the Company may deliver Ordinary Senior Debt Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Ordinary Senior Debt Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Ordinary Senior Debt Securities. In authenticating such Ordinary Senior Debt Securities and accepting the additional responsibilities under this Ordinary Senior Debt Securities Indenture in relation to such Ordinary Senior Debt



200FX&=&eN45R&jLn

Securities the Trustee shall be entitled to receive, and (subject to Section 6.01) shall be fully protected in relying upon, an Opinion of Counsel stating that the form and terms thereof have been established in conformity with the provisions of this Ordinary Senior Debt Securities Indenture.

If all the Ordinary Senior Debt Securities of any series are not to be issued at one time, it shall not be necessary to deliver an Opinion of Counsel and an Officer's Certificate at the time of issuance of each Senior Debt Security, but such opinion and certificate, with appropriate modifications, shall be delivered at or before the time of issuance of the first Senior Debt Security of such series. After any such first delivery, any separate request by the Company that the Trustee authenticate Ordinary Senior Debt Securities of such series for original issue will be deemed to be a certification by the Company that all conditions precedent provided for in this Ordinary Senior Debt Securities Indenture relating to authentication and delivery of such Ordinary Senior Debt Securities continue to have been complied with.

The Trustee shall not be required to authenticate such Ordinary Senior Debt Securities if the issue of such Ordinary Senior Debt Securities pursuant to this Ordinary Senior Debt Securities Indenture will affect the Trustee's own rights, duties or immunities under the Ordinary Senior Debt Securities and this Ordinary Senior Debt Securities Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Each Senior Debt Security shall be dated the date of its authentication.

No Senior Debt Security appertaining thereto shall be entitled to any benefit under this Ordinary Senior Debt Securities Indenture or be valid or obligatory for any purpose unless there appears on such Senior Debt Security a certificate of authentication substantially in the form provided for herein executed by or on behalf of the Trustee by manual signature, and such certificate upon any Senior Debt Security shall be conclusive evidence, and the only evidence, that such Senior Debt Security has been duly authenticated and delivered hereunder and that such Senior Debt Security is entitled to the benefits of this Ordinary Senior Debt Securities Indenture. Notwithstanding the foregoing, if any Senior Debt Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Senior Debt Security to the Trustee for cancellation as provided in Section 3.09, for all purposes of this Ordinary Senior Debt Securities Indenture, such Senior Debt Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefit of this Ordinary Senior Debt Securities Indenture.

Section 3.04. *Temporary Ordinary Senior Debt Securities.* Pending the preparation of definitive Ordinary Senior Debt Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Ordinary Senior Debt Securities substantially of the tenor of the definitive Ordinary Senior Debt Securities in lieu of which they are issued, and, if applicable, which Ordinary Senior Debt Securities may be printed, lithographed, typewritten, photocopied or otherwise produced. Temporary Ordinary Senior Debt Securities shall be issuable as



Ordinary Senior Debt Securities in registered form in any authorized denomination, and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Ordinary Senior Debt Securities may determine, all as evidenced by such execution.

If temporary Ordinary Senior Debt Securities of any series are issued, the Company will cause, if so required by the terms of such temporary Ordinary Senior Debt Securities, definitive Ordinary Senior Debt Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Ordinary Senior Debt Securities of such series, the temporary Ordinary Senior Debt Securities of such series shall be exchangeable for definitive Ordinary Senior Debt Securities of such series containing identical terms and provisions upon surrender of the temporary Ordinary Senior Debt Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Ordinary Senior Debt Securities of any series the Company shall execute, and the Trustee shall authenticate and deliver in exchange therefor, a like aggregate principal amount of definitive Ordinary Senior Debt Securities of the same series of authorized denominations containing identical terms and provisions. Until so exchanged, unless otherwise provided therein or in a supplemental indenture relating thereto, the temporary Ordinary Senior Debt Securities of any series shall in all respects be entitled to the same benefits (but shall be subject to all the limitations of rights) under this Ordinary Senior Debt Securities Indenture as definitive Ordinary Senior Debt Securities of such series.

Section 3.05. *Registration, Registration of Transfer and Exchange.* (a) *Global Securities.* This Section 3.05(a) shall apply to Global Securities unless otherwise specified, as contemplated by Section 3.01.

Except as otherwise specified, as contemplated by Section 3.01 hereof, the Ordinary Senior Debt Securities shall be initially issued and represented by one or more Global Securities in registered form, which shall be authenticated as contemplated by this Ordinary Senior Debt Securities Indenture.

Each Global Security authenticated under this Ordinary Senior Debt Securities Indenture shall be registered in the name of the Depository designated for such Global Security or a nominee thereof and delivered to such Depository or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Senior Debt Security for all purposes of this Ordinary Senior Debt Securities Indenture. Except as otherwise specified, as contemplated by Section 3.01 hereof, each Global Security authenticated under this Ordinary Senior Debt Securities Indenture shall be initially registered in the name of DTC or its nominee only.

Unless the Global Security is presented by an authorized representative of the Holder to the Company or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of a nominee of the Holder and any payment is made to such nominee, any transfer, pledge or other use of the Global Security for value or otherwise shall be wrongful since the registered owner of such Global Security, the nominee of the Holder, has an interest in such Global Security.



Except as otherwise specified, as contemplated by Section 3.01 hereof, any Global Security shall be exchangeable for definitive Ordinary Senior Debt Securities only as provided in this paragraph. A Global Security shall be exchangeable pursuant to this Section only (i) if the relevant Depository notifies the Trustee that it is unwilling or unable to continue to act as Depository and a successor depository is not appointed by the Trustee within 120 days of such notification, (ii) if, in the event of a winding-up of the Company, the Company fails to make a payment on the Ordinary Senior Debt Securities when due, or (iii) at any time if the Company at its option and in its sole discretion determines that the Global Securities of a particular series should be exchanged for definitive Ordinary Senior Debt Securities of that series. Any Global Security that is exchangeable pursuant to the preceding sentence shall be exchangeable for, unless otherwise specified or contemplated by Section 3.01, definitive Ordinary Senior Debt Securities bearing interest (if any) at the same rate or pursuant to the same formula, having the same date of issuance, the same date or dates from which such interest shall accrue, the same Interest Payment Dates on which such interest shall be payable or the manner of determination of such Interest Payment Dates, redemption provisions, if any, specified currency and other terms and of differing denominations aggregating a like amount as the Global Security so exchangeable. Definitive Ordinary Senior Debt Securities shall be registered in the names of the owners of the beneficial interests in such Global Securities as such names are from time to time provided by the Holder to the Trustee.

Any Global Security that is exchangeable pursuant to the preceding paragraph, unless otherwise specified as contemplated by Section 3.01, shall be exchangeable for Ordinary Senior Debt Securities issuable in authorized denominations of a like aggregate principal amount and tenor.

No Global Security may be transferred except as a whole by the Holder to a nominee of the Holder or by the Holder or any such nominee to a successor of the Holder or a nominee of such successor. Except as provided above, owners solely of beneficial interests in a Global Security shall not be entitled to receive physical delivery of Ordinary Senior Debt Securities in definitive form and will not be considered the holders thereof for any purpose under this Ordinary Senior Debt Securities Indenture.

In the event that a Global Security is surrendered for redemption or exchange for stock or other securities of the Company or another entity or other entities in part pursuant to Section 11.07, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Global Security, without service charge, a new Global Security in a denomination equal to and in exchange for the unredeemed or unexchanged portion of the principal of the Global Security so surrendered.

The Agent Members and any other beneficial owners shall have no rights under this Ordinary Senior Debt Securities Indenture with respect to any Global Security held on their behalf by a Holder, and such Holder may be treated by the Company, the Trustee



and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall (i) prevent the Company, the Trustee, or any agent of the Company, or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by a Holder or (ii) impair, as between any such Holder or other clearance service and its Agent Members and Holders, the operation of customary practices governing the exercise of the rights of a holder of any security, including without limitation the granting of proxies or other authorization of participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under this Ordinary Senior Debt Securities Indenture.

In connection with any exchange of interests in a Global Security for definitive Ordinary Senior Debt Securities of another authorized form, as provided in this Section 3.05(a), then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Company shall deliver to the Trustee definitive Ordinary Senior Debt Securities in aggregate principal amount equal to the principal amount of such Global Security or the portion to be exchanged executed by the Company. On or after the earliest date on which such interests may be so exchanged, such Global Security shall be surrendered by the Holder to the Trustee, as the Company's agent for such purpose, to be exchanged, in whole or from time to time in part, for definitive Ordinary Senior Debt Securities without charge (in which case the Company or Trustee may require payment of any taxes or governmental charges arising) and the Trustee shall authenticate and deliver, in exchange for each portion of such Global Security, an equal aggregate principal amount of definitive Ordinary Senior Debt Securities of authorized denominations as the portion of such Global Security to be exchanged. Any Global Security that is exchangeable pursuant to this Section 3.05 shall be exchangeable for Ordinary Senior Debt Securities issuable in the denominations specified as contemplated by Section 3.01 and registered in such names as the Holder of such Global Security shall direct. If a definitive Senior Debt Security is issued in exchange for any portion of a Global Security after the close of business at the office or agency where such exchange occurs on any record date and before the opening of business at such office or agency on the relevant Interest Payment Date, interest will not be payable on such Interest Payment Date in respect of such definitive Senior Debt Security, but will be payable on such Interest Payment Date only to the Person to whom payments of interest in respect of such portion of such Global Security are payable.

A Depository may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a holder is entitled to take under this Ordinary Senior Debt Securities Indenture with respect to the Ordinary Senior Debt Securities.

(b) Except as otherwise specified pursuant to Section 3.01, Ordinary Senior Debt Securities of any series may only be exchanged for a like aggregate principal amount of Ordinary Senior Debt Securities of such series of other authorized denominations containing identical terms and provisions. Ordinary Senior Debt Securities to be exchanged shall be surrendered at an office or agency of the Company designated pursuant to Section 10.02 for such purpose, and the Company shall execute, and the



Trustee shall authenticate and deliver, in exchange therefor the Senior Debt Security or Ordinary Senior Debt Securities of the same series which the Holder making the exchange shall be entitled to receive.

Except as otherwise specified pursuant to Section 3.01, the Company shall cause to be kept in the principal corporate trust office of the Trustee a register (the register maintained in such office and in any other office or agency of the Company in a Place of Payment being herein sometimes collectively referred to as the “**Senior Debt Security Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Ordinary Senior Debt Securities and of transfers of such Ordinary Senior Debt Securities. Except as otherwise specified pursuant to Section 3.01, the Trustee is hereby appointed “**Senior Debt Security Registrar**” for the purpose of registering Ordinary Senior Debt Securities and transfers of Ordinary Senior Debt Securities as herein provided.

Ordinary Senior Debt Securities shall be transferable only on the Senior Debt Security Register. Upon surrender for registration of transfer of any Senior Debt Security of any series, together with the form of transfer endorsed on it, duly completed and executed at an office or agency of the Company designated pursuant to Section 10.02 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver to the address specified in the form of transfer, within three Business Days, in the name of the designated transferee or transferees, one or more new Ordinary Senior Debt Securities of the same series of any authorized denominations containing identical terms and provisions, of a like aggregate principal amount.

If only part of a Senior Debt Security is transferred, a new Senior Debt Security of an aggregate principal amount equal to the amount not being transferred shall be executed by the Company, and authenticated and delivered by the Trustee to the transferor, in the name of the transferor, within three Business Days after the Trustee acting as Paying Agent pursuant to Section 10.02 receives the Senior Debt Security. The new Senior Debt Security will be delivered to the transferor by uninsured post at the risk of the transferor to the address of the transferor appearing in the Senior Debt Security Register. A new Senior Debt Security of an aggregate principal amount equal to the amount being transferred shall be delivered by the Trustee to the transferee, in the name of the transferee, within three Business Days after the Trustee acting as Paying Agent pursuant to Section 10.02 receives the Senior Debt Security. The new Senior Debt Security will be delivered to the transferee by uninsured post at the risk of the transferee to the address of the transferee specified in the form of transfer.

All Ordinary Senior Debt Securities issued upon any registration of transfer or exchange of Ordinary Senior Debt Securities shall be the valid obligations of the Company evidencing the same debt, and entitled to the same benefits under this Ordinary Senior Debt Securities Indenture, as the Ordinary Senior Debt Securities surrendered upon such registration of transfer or exchange.

Every Senior Debt Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be





accompanied by a written instrument of transfer in form satisfactory to the Company and the Senior Debt Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Ordinary Senior Debt Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Ordinary Senior Debt Securities, other than exchanges pursuant to Section 3.04, Section 9.06 or Section 11.07 not involving any transfer.

The Company shall not be required (i) to issue, register the transfer of or exchange any Senior Debt Security of any series during a period beginning at the opening of business 15 days before the day of the giving of a notice of redemption of Ordinary Senior Debt Securities of such series selected for redemption under Section 11.03 and ending at the close of business on the day of the giving of such notice, or (ii) to register the transfer of or exchange any Senior Debt Security so selected for redemption in whole or in part, except the unredeemed portion of any Ordinary Senior Debt Securities being redeemed in part.

Section 3.06. *Mutilated, Destroyed, Lost and Stolen Ordinary Senior Debt Securities.* If any mutilated Senior Debt Security (including any Global Security) is surrendered to the Trustee, the Company may execute and the Trustee shall, in the case of a Senior Debt Security, authenticate and deliver in exchange therefor a new Senior Debt Security of the same series containing identical terms and provisions and of like amount, and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Senior Debt Security (including any Global Security) and (ii) such security or indemnity as may be required by them to save each of them and any agent of any of them harmless, then, in the absence of notice to the Company or the Trustee that such Senior Debt Security has been acquired by a bona fide purchaser, the Company shall execute and upon the Company's request the Trustee shall authenticate and deliver in lieu of any such destroyed, lost or stolen Senior Debt Security a new Senior Debt Security of the same series containing identical terms and provisions and of like amount, and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Senior Debt Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Senior Debt Security, pay such Senior Debt Security.

Upon the issuance of any new Senior Debt Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.



Every new Senior Debt Security of any series issued pursuant to this Section in lieu of any destroyed, lost or stolen Senior Debt Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Senior Debt Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Ordinary Senior Debt Securities Indenture equally and proportionately with any and all other Ordinary Senior Debt Securities of that series duly issued hereunder.

The provisions of this Section, as amended or supplemented pursuant to this Ordinary Senior Debt Securities Indenture, are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Ordinary Senior Debt Securities.

Section 3.07. *Payment; Interest Rights and Rights to Additional Amounts Preserved.* Except as otherwise provided as contemplated by Section 3.01 with respect to any series of Ordinary Senior Debt Securities, interest, if any, and any Additional Amounts on any Ordinary Senior Debt Securities which is payable, and is paid or duly provided for, on any Interest Payment Date shall be paid, to the Holder (including through a Paying Agent of the Company designated pursuant to Section 3.01 for collection by the Holder) at the close of business on the Regular Record Date.

In the case of Ordinary Senior Debt Securities where payment is to be made in dollars, payment at any Paying Agent's office outside The City of New York will be made in dollars by check drawn on, or, at the request of the Holder, by transfer to a dollar account maintained by the payee with, a bank in The City of New York.

In the case of Ordinary Senior Debt Securities where payment is to be made in a Foreign Currency, payment will be made as established pursuant to Section 3.01.

Any interest on and any Additional Amounts with respect to any Senior Debt Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date is herein called "**Default Interest**". Default Interest on any Senior Debt Security of any series shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue then of having been such Holder, and such Default Interest may be paid by the Company, at its election in each case, as provided in clause (a) or (b) below:

(a) The Company may elect to make payment of any Default Interest to the Persons in whose names the Ordinary Senior Debt Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Default Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Default Interest proposed to be paid on each Senior Debt Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Default Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be



held in trust for the benefit of the Persons entitled to such Default Interest as in this clause provided. Thereupon the Company shall fix a Special Record Date for the payment of such Default Interest in respect of such Ordinary Senior Debt Securities of such series which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after it delivers to the Trustee notice of the proposed payment. The Company shall promptly notify the Trustee of such Special Record Date and, in the name and at the expense of the Company, the Trustee shall cause notice of the proposed payment of such Default Interest and the Special Record Date therefor to be given in the manner and to the extent provided in Section 1.06, not less than 10 days prior to such Special Record Date. The Trustee shall, at the instruction of the Company, in the name and at the expense of the Company, cause a similar notice to be published in an Authorized Newspaper of general circulation in the Borough of Manhattan, The City of New York, but such publication shall be not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Default Interest on the Ordinary Senior Debt Securities of such series and the Special Record Date therefor having been so given, such Default Interest on the Ordinary Senior Debt Securities of such series shall be paid in the case of Ordinary Senior Debt Securities to the Persons in whose names such Ordinary Senior Debt Securities (or their respective Predecessor Securities) are registered in the Senior Debt Security Register at the close of business on the Special Record Date, and such Default Interest shall no longer be payable pursuant to the following clause (b); or

(b) The Company may make payment of any Default Interest on the Ordinary Senior Debt Securities of any series to the Persons in whose names the Ordinary Senior Debt Securities are registered in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Ordinary Senior Debt Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Senior Debt Security delivered under this Ordinary Senior Debt Securities Indenture upon registration of transfer of or in exchange for or in lieu of any other Senior Debt Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Senior Debt Security.

Section 3.08. *Persons Deemed Owners.* Prior to due presentment of a Senior Debt Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Senior Debt Security is registered as the owner of such Senior Debt Security for the purpose of receiving payment of principal of (and premium, if any) and interest, if any, on and any Additional Amounts with respect to such Senior Debt Security and for all other purposes whatsoever, whether or not such Senior Debt Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary. The aggregate principal amount of the Ordinary Senior Debt Securities of any series shall be reflected on the books and records of the Senior Debt Security Registrar.



None of the Company, the Trustee, the Paying Agent or the Senior Debt Security Registrar shall have any responsibility or obligation to any beneficial owner in a Global Security, an Agent Member or other Person with respect to the accuracy of the records of the Depository or its nominee or of any Agent Member, with respect to any ownership interest in the Ordinary Senior Debt Securities or with respect to the delivery to any Agent Member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Ordinary Senior Debt Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Ordinary Senior Debt Securities and this Ordinary Senior Debt Securities Indenture shall be given or made only to or upon the order of the registered holders (which shall be the Depository or its nominee in the case of the Global Security). The rights of beneficial owners in the Global Security shall be exercised only through the Depository subject to the applicable procedures. The Company, the Trustee, the Paying Agent and the Senior Debt Security Registrar shall be entitled to rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners. The Trustee, the Paying Agent and the Senior Debt Security Registrar shall be entitled to deal with the Depository, and any nominee thereof, that is the registered holder of any Global Security for all purposes of this Ordinary Senior Debt Securities Indenture relating to such Global Security (including the payment of principal, premium, if any, and interest and additional amounts, if any, and the giving of instructions or directions by or to the owner or holder of a beneficial ownership interest in such Global Security) as the sole holder of such Global Security and shall have no obligations to the beneficial owners thereof. None of the Company, the Trustee, the Paying Agent or the Senior Debt Security Registrar shall have any responsibility or liability for any acts or omissions of the Depository with respect to such Global Security, for the records of any such depository, including records in respect of beneficial ownership interests in respect of any such Global Security, for any transactions between the Depository and any Agent Member or between or among the Depository, any such Agent Member and/or any holder or owner of a beneficial interest in such Global Security, or for any transfers of beneficial interests in any such Global Security.

Notwithstanding the foregoing, with respect to any Global Security, nothing herein shall prevent the Company, the Trustee, or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by any Depository (or its nominee), as a Holder, with respect to such Global Security or shall impair, as between such Depository and owners of beneficial interests in such Global Security, the operation of customary practices governing the exercise of the rights of such Depository (or its nominee) as Holder of such Global Security.

Each Holder and beneficial owner that acquires its Senior Debt Security in the secondary market shall be deemed to acknowledge and agree to be bound by and consent to the same provisions specified in this Ordinary Senior Debt Securities Indenture and the Ordinary Senior Debt Securities to the same extent as the Holders and beneficial owners of the Ordinary Senior Debt Securities that acquire the Ordinary Senior Debt Securities upon their initial issuance, including, without limitation, with respect to the acknowledgement and agreement to be bound by and consent to the terms of the Ordinary Senior Debt Securities, including in relation to the Bail-in Power.



200FX&=8eN47B3xs2

Section 3.09. *Cancellation.* All Ordinary Senior Debt Securities surrendered for payment, redemption, registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Ordinary Senior Debt Securities previously authenticated and delivered hereunder and all Ordinary Senior Debt Securities so delivered shall be promptly cancelled by the Trustee. No Ordinary Senior Debt Securities shall be authenticated in lieu of or in exchange for any Ordinary Senior Debt Securities cancelled as provided in this Section, except as expressly permitted by the provisions of the Ordinary Senior Debt Securities of any series or pursuant to the provisions of this Ordinary Senior Debt Securities Indenture. The Trustee shall deliver to the Company all cancelled Ordinary Senior Debt Securities held by the Trustee.

Section 3.10. *Computation of Interest.* Except as otherwise specified pursuant to Section 3.01 for Ordinary Senior Debt Securities of any series, payments of interest on the Ordinary Senior Debt Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 3.11. *CUSIP Numbers.* The Company in issuing any series of the Ordinary Senior Debt Securities may use “CUSIP”, “ISIN” and/or “Common Code” and/or other similar numbers (if then generally in use) or any successor to such numbers and thereafter with respect to such series, the Trustee shall use “CUSIP”, “ISIN” and/or “Common Code” and/or other similar numbers or successor numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Ordinary Senior Debt Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Ordinary Senior Debt Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the “CUSIP”, “ISIN” and/or “Common Code” and/or other similar numbers or successor numbers.

Section 3.12. *Additional Ordinary Senior Debt Securities.* The Company may, from time to time, without the consent of the Holders of the Ordinary Senior Debt Securities of any series, issue additional Ordinary Senior Debt Securities (“**Additional Ordinary Senior Debt Securities**”) of one or more of the series of Ordinary Senior Debt Securities issued under this Ordinary Senior Debt Securities Indenture, having the same ranking and same interest rate, Maturity, redemption terms and other terms, except for the price to the public, original interest accrual date, issue date and first Interest Payment Date, as the Ordinary Senior Debt Securities; *provided*, however, that such Additional Ordinary Senior Debt Securities will not have the same CUSIP, ISIN or other identifying number as the Outstanding Ordinary Senior Debt Securities of such series unless the Additional Ordinary Senior Debt Securities are fungible with the Outstanding Ordinary Senior Debt Securities for U.S. federal income tax purposes. Any such Additional



Ordinary Senior Debt Securities, together with the Ordinary Senior Debt Securities of the applicable series, will constitute a single series of Ordinary Senior Debt Securities under this Ordinary Senior Debt Securities Indenture and shall be included in the definition of “Ordinary Senior Debt Securities” in this Ordinary Senior Debt Securities Indenture where the context requires.

Section 3.13. *Correction of Minor Defects in or Amendment of Ordinary Senior Debt Securities.* If, after issuance of any Senior Debt Security (including any Global Security), the Company or the Trustee shall become aware of any ambiguity, defect or inconsistency in any term of a Senior Debt Security or Global Security, as the case may be, or, with respect to any Senior Debt Security (including any Global Security) issued on or after the date hereof, the Company and the Trustee agree to amend such Senior Debt Security as contemplated by Section 9.01(l), the parties hereto shall provide for the execution, authentication, delivery and dating of one or more replacement Ordinary Senior Debt Securities or Global Securities, as the case may be, pursuant to Section 3.03 hereto.

Section 3.14. *Payments Subject to Fiscal Laws.* All payments in respect of the Ordinary Senior Debt Securities will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment (including FATCA, any regulations or agreements thereunder, any official interpretation thereof, any intergovernmental agreements with respect thereto, or any law implementing an intergovernmental agreement or any regulations or official interpretations relating thereto), but without prejudice to the provisions of Section 10.04.

**ARTICLE 4**  
**SATISFACTION AND DISCHARGE**

Section 4.01. *Satisfaction and Discharge of Ordinary Senior Debt Securities Indenture.* This Ordinary Senior Debt Securities Indenture shall upon Company Request cease to be of further effect with respect to Ordinary Senior Debt Securities of any series (except as to any surviving rights of registration of transfer or exchange of Ordinary Senior Debt Securities of such series herein expressly provided for), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Ordinary Senior Debt Securities Indenture with respect to the Ordinary Senior Debt Securities of such series when

(a) either

(i) all Ordinary Senior Debt Securities of such series theretofore authenticated and delivered (other than (A) Ordinary Senior Debt Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.06 and (B) Ordinary Senior Debt Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.03) have been delivered to the Trustee for cancellation; or



- (ii) all such Ordinary Senior Debt Securities not theretofore delivered to the Trustee for cancellation
  - (A) have become due and payable or will become due and payable at their Stated Maturity within one year, or
  - (B) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

and the Company has deposited or caused to be deposited with the Trustee, as trust funds in trust for the purpose, an amount in cash, or U.S. Government Obligations (with respect to Ordinary Senior Debt Securities denominated in dollars) or Foreign Government Securities with respect to Ordinary Senior Debt Securities denominated in the same Foreign Currency) maturing, in the case of (A) and (B) above, as to principal and interest, if any, and, in the case of (C) above, as to accrued interest, if any, in such amounts and at such times as will ensure the availability of cash sufficient without reinvestment, as confirmed by a letter from an internationally recognized firm of independent public accountants (which shall not be subject to the requirements of Section 1.02) in the form of an agreed-upon procedures letter in its then customary form, to pay, satisfy and discharge all claims with respect to such Ordinary Senior Debt Securities not theretofore delivered to the Trustee for cancellation, in the case of (A) and (B) above, for principal (and premium, if any) and accrued interest, if any to the date of such deposit (in the case of Ordinary Senior Debt Securities which have become due and payable) or to the Redemption Date, as the case may be;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company with respect to the Ordinary Senior Debt Securities of such series; and

(c) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Ordinary Senior Debt Securities Indenture with respect to the Ordinary Senior Debt Securities of such series have been complied with.

In addition, upon the exercise of a Bail-in Power with respect to a series of Ordinary Senior Debt Securities which results in the cancellation, or the conversion into other securities, of all the principal amount of, and interest on such Ordinary Senior Debt Securities or such Ordinary Senior Debt Securities otherwise ceasing to be outstanding, this Ordinary Senior Debt Securities Indenture shall be satisfied and discharged as to such series.

Notwithstanding any satisfaction and discharge of this Ordinary Senior Debt Securities Indenture, the obligations of the Company to the Trustee under Section 6.08, the obligations of the Trustee to any Authenticating Agent under Section 6.15 and, if cash, U.S. Government Obligations and/or Foreign Government Securities shall have



been deposited with the Trustee pursuant to clause (a)(ii) of subsection (a) of this Section, the obligations of the Trustee under Section 4.03 and the last paragraph of Section 10.03 shall survive such satisfaction and discharge, including any termination under any bankruptcy law.

Section 4.02. *Defeasance and Covenant Defeasance.* (a) If, pursuant to Section 3.01, provision is made for either or both of (i) defeasance of the Ordinary Senior Debt Securities of or within a series under subsection (b) of this Section 4.02 or (ii) covenant defeasance of the Ordinary Senior Debt Securities of or within a series under subsection (c) of this Section 4.02, then such provisions, together with the other provisions of this Section 4.02 (with such modifications thereto as may be specified pursuant to Section 3.01 with respect to any Ordinary Senior Debt Securities), shall be applicable to such Ordinary Senior Debt Securities, and the Company may at its option by Company Order, at any time, with respect to such Ordinary Senior Debt Securities, elect to have (b) (if applicable) or (c) (if applicable) be applied to such Outstanding Ordinary Senior Debt Securities upon compliance with the conditions set forth below in this Section 4.02.

(b) Upon the Company's exercise of the above option applicable to this subsection (b) with respect to any Ordinary Senior Debt Securities of or within a series, the Company shall be deemed to have been discharged from its obligations with respect to such Outstanding Ordinary Senior Debt Securities on the date the conditions set forth in subsection (d) of this Section 4.02 are satisfied (hereinafter, "defeasance"). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by such Outstanding Ordinary Senior Debt Securities, and such Ordinary Senior Debt Securities shall thereafter be deemed to be "Outstanding" only for the purposes of subsection (e) of this Section 4.02 and the other Sections of this Ordinary Senior Debt Securities Indenture referred to in clauses (i) and (ii) below, the Company shall be deemed to have satisfied all of its other obligations under such Ordinary Senior Debt Securities and this Ordinary Senior Debt Securities Indenture insofar as such Ordinary Senior Debt Securities are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of such Outstanding Securities to receive, solely from the trust fund described in subsection (d) of this Section 4.02 and as more fully set forth in such Section, payments in respect of the principal of (and premium, if any) and interest and Additional Amounts, if any, on such Ordinary Senior Debt Securities when such payments are due, (ii) the Company's obligations with respect to such Ordinary Senior Debt Securities under Section 3.05, Section 3.06, Section 10.02 and Section 10.03 and with respect to the payment of Additional Amounts, if any, on such Securities as contemplated by Section 10.04, (iii) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (iv) this Section 4.02. The Company may exercise its option under this subsection (b) notwithstanding the prior exercise of its option under subsection (c) of this Section 4.02 with respect to such Ordinary Senior Debt Securities.

(c) Upon the Company's exercise of the above option applicable to this subsection (c) with respect to any Ordinary Senior Debt Securities of or within a series, the Company shall be released from, if specified pursuant to Section 3.01, their





200FX&=&eN43&x&s<

obligations under any other covenant, with respect to such Outstanding Ordinary Senior Debt Securities on and after the date the conditions set forth in subsection (d) of this Section 4.02 are satisfied (hereinafter, "covenant defeasance"), and such Ordinary Senior Debt Securities shall thereafter be deemed to be not "Outstanding" for the purposes of any direction, waiver, consent or declaration (and the consequences of any thereof) in connection with such other covenant, but shall continue to be deemed "Outstanding" for all other purposes hereunder. For this purpose, such covenant defeasance means that, with respect to such Outstanding Ordinary Senior Debt Securities, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such Section or such other covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or such other covenant or by reason of reference in any such Section or such other covenant to any other provision herein or in any other document and such omission to comply shall not constitute a default or an Event of Default, as the case may be, but, except as specified above, the remainder of this Ordinary Senior Debt Securities Indenture and such Ordinary Senior Debt Securities shall be unaffected thereby.

(d) The following shall be the conditions to application of subsection (b) or (c) of this Section 4.02 to any Outstanding Senior Securities of or within a series:

(i) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 6.11 who shall agree to comply with the provisions of this Section 4.02 applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Ordinary Senior Debt Securities, (A) an amount in dollars or in such Foreign Currency in which such Ordinary Senior Debt Securities are then specified as payable at Stated Maturity, or (B) U.S. Government Obligations applicable to such Ordinary Senior Debt Securities (determined on the basis of the Currency in which such Ordinary Senior Debt Securities are then specified as payable at Stated Maturity) which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment of principal of (and premium, if any) and interest, if any, on such Ordinary Senior Debt Securities, money in an amount, or (C) a combination thereof, in any case, in an amount, sufficient, without consideration of any reinvestment of such principal and interest, in the opinion of an internationally recognized firm of Independent Public Accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, (y) the principal of (and premium, if any) and interest, if any, on such outstanding Ordinary Senior Debt Securities on the Stated Maturity of such principal or installment of principal or interest and Additional Amounts and (z) any mandatory sinking fund payments or analogous payments applicable to such Outstanding Ordinary Senior Debt Securities on the day on which such payments are due and payable in accordance with the terms of this Ordinary Senior Debt Securities Indenture and of such Ordinary Senior Debt Securities.



(ii) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other material agreement or instrument to which the Company is a party or by which it is bound.

(iii) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to such Ordinary Senior Debt Securities shall have occurred and be continuing on the date of the establishment of such trust and, with respect to legal defeasance only, at any time during the period ending on the 91st day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until the expiration of such period).

(iv) In the case of an election under subsection (b) of this Section 4.02, the Company shall have delivered to the Trustee an opinion of counsel of recognized standing stating that (A) the Company has received from the Internal Revenue Service a letter ruling, or there has been published by the Internal Revenue Service a Revenue Ruling, or (B) since the date of execution of this Ordinary Senior Debt Securities Indenture, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the beneficial owners of such Outstanding Ordinary Senior Debt Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such legal defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such legal defeasance had not occurred.

(v) In the case of an election under subsection (c) of this Section 4.02, the Company shall have delivered to the Trustee an opinion of counsel of recognized standing to the effect that the beneficial owners of such Outstanding Ordinary Senior Debt Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such covenant defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred.

(vi) Such defeasance or covenant defeasance shall not cause the Trustee to have a conflicting interest within the meaning of the Trust Indenture Act (assuming all relevant Securities are in default within the meaning of such Act).

(vii) Such defeasance or covenant defeasance shall not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended, and rules and regulations adopted by the Commission thereunder, unless such trust shall be registered under such Act or exempt from registration thereunder.



(viii) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance or covenant defeasance under subsection (b) or (c) of this Section 4.02 (as the case may be) have been complied with.

(ix) Notwithstanding any other provisions of this subsection (d), such defeasance or covenant defeasance shall be effected in compliance with any additional or substitute terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 3.01.

(e) Subject to the provisions of the last paragraph of Section 10.03, all money and U.S. Government Obligations (or other property as may be provided pursuant to Section 3.01) (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this subsection (e), the "Trustee") pursuant to subsection (d) of Section 4.02 in respect of any Outstanding Ordinary Senior Debt Securities of any series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Ordinary Senior Debt Securities and this Ordinary Senior Debt Securities Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Ordinary Senior Debt Securities of all sums due and to become due thereon in respect of principal (and premium, if any) and interest and Additional Amounts, if any, but such money need not be segregated from other funds except to the extent required by law.

(f) Unless otherwise specified with respect to any Senior Debt Security pursuant to Section 3.01, if, after a deposit referred to in subsection (d)(i) has been made, (i) the Holder of a Senior Debt Security in respect of which such deposit was made is entitled to, and does, elect pursuant to Section 3.01 or the terms of such Senior Debt Security to receive payment in a Currency other than that in which the deposit pursuant to subsection (d)(i) has been made in respect of such Security, or (ii) a Conversion Event occurs in respect of the Foreign Currency in which the deposit pursuant to (d)(i) has been made, the indebtedness represented by such Senior Debt Security shall be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of (and premium, if any), and interest, if any, and Additional Amounts, if any, on such Senior Debt Security as the same becomes due out of the proceeds yielded by converting (from time to time as specified below in the case of any such election) the amount or other property deposited in respect of such Security into the Currency in which such Security becomes payable as a result of such election or Conversion Event based on the applicable market exchange rate for such Currency in effect on the second Business Day prior to each payment date, except, with respect to a Conversion Event, for such Foreign Currency in effect at the time of the Conversion Event.

(g) Anything in this Section 4.02 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations (or other property and any proceeds therefrom) held by it as provided in subsection (d) of this Section 4.02 which, in the opinion of an internationally recognized firm of independent public accountants expressed in a written



certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect a defeasance or covenant defeasance, as applicable, in accordance with this Section 4.02.

Section 4.03. *Application of Trust Money.* Subject to the provisions of the last paragraph of Section 10.03, all cash, U.S. Government Obligations and Foreign Government Securities deposited with the Trustee pursuant to Section 4.01 shall be held in trust and such cash and the proceeds from such U.S. Government Obligations and/or Foreign Government Securities shall be applied by it, in accordance with the provisions of the Ordinary Senior Debt Securities of such series, and this Ordinary Senior Debt Securities Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for the payment of which such cash, U.S. Government Obligations and/or Foreign Government Securities have been deposited with the Trustee.

Section 4.04. *Repayment to Company.* The Trustee, the Calculation Agent and any Paying Agent promptly shall pay to the Company upon Company Request any excess money, U.S. Government Obligations and/or Foreign Government Securities held by them at any time with respect to any series of Ordinary Senior Debt Securities.

Section 4.05. *Reinstatement.* If the Trustee or any Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article 4 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Ordinary Senior Debt Securities Indenture and the Ordinary Senior Debt Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article 4 until such time as the Trustee or such Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article 4; provided, however, that, if the Company has made any payment of principal of or interest on any Ordinary Senior Debt Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Ordinary Senior Debt Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or such Paying Agent.

## ARTICLE 5 REMEDIES

Section 5.01. *Events of Default.* (a) An Event of Default with respect to any series of Ordinary Senior Debt Securities shall result if:

(i) *Non-payment:* default is made in the payment of any interest or principal due in respect of the Ordinary Senior Debt Securities of that series or any of them and such default continues for a period of seven days (or such other period as may be specified pursuant to Section 3.01); or



(ii) *Breach of other obligations*: the Company fails to perform or observe any of its other obligations under or in respect of the Ordinary Senior Debt Securities of such series or this Ordinary Senior Debt Securities Indenture and (except in any case where such failure is incapable of remedy when no such continuation as is hereinafter mentioned will be required) the failure continues for a period of 30 days next following the service by the Trustee on the Company of a notice requiring the same to be remedied; or

(iii) *Winding up*: any order is made by any competent court or resolution passed for the winding up or dissolution of the Company (except in any such case for the purpose of reconstruction or a merger or amalgamation which has been previously approved by the Holders of at least a majority of the outstanding principal amount of the Ordinary Senior Debt Securities of that series or a merger with another institution in this case even without being approved by Holders of the Ordinary Senior Debt Securities of such series, provided that any entity that survives or is created as a result of such merger is given a rating by an internationally recognized rating agency at least equal to the then current rating of the Company at the time of such merger); or

(iv) *Cessation of business*: the Company ceases or threatens to cease to carry on the whole or a substantial part of its business, save for the purposes of a reorganization (except in any such case for the purpose of reconstruction or a merger, spin-off or amalgamation which has been previously approved by the Holders of at least a majority of the outstanding principal amount of the Ordinary Senior Debt Securities of that series or a merger with another financial institution or spin-off in each such case even without being approved by Holders of the Ordinary Senior Debt Securities of such series, provided that any entity that survives or is created as a result of such merger or spin-off is given a rating by an internationally recognized rating agency at least equal to the then current rating of the Company at the time of such merger), or the Company stops or threatens to stop payment of, or is unable to, or admits in writing inability to, pay, its debts (or any class thereof) as they fall due, or is deemed unable to pay its debts pursuant to or for the purposes of any applicable law, or is adjudicated or found bankrupt or insolvent; or

(v) *Insolvency proceedings*: (a) proceedings are initiated against the Company under any applicable liquidation, insolvency, composition, reorganization or other similar laws, or an application made for the appointment of an administrative or other receiver, manager, administrator or other similar official, or an administrative or other receiver, manager, administrator or other similar official is appointed, in relation to the Company or in relation to the whole or a part of the undertaking or assets of either of them, or an encumbrancer takes possession of the whole or a part of the undertaking or assets of either of them, or a distress, execution, attachment, sequestration or other process is levied, enforced upon, sued or put in force against the whole or a part of the undertaking or assets or any of them and (b) in any case is not discharged within 14 days; or

(vi) *Arrangements with creditors*: the Company initiates or consents to judicial proceedings relating to itself under any applicable liquidation, insolvency, composition, reorganization or other similar laws or makes a conveyance or assignment for the benefit of, or enters into any composition or other arrangement with, its creditors generally (or any class of its creditors).



(b) Neither a cancellation of the Ordinary Senior Debt Securities of any series, a reduction, in part or in full, of the Amounts Due of the Ordinary Senior Debt Securities of any series, the conversion thereof into another security or obligation of the Company or another person, in each case, as a result of the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Company, nor the exercise of any Bail-in Power by the Relevant Resolution Authority or any other resolution power with respect to such Ordinary Senior Debt Securities, will be an Event of Default or otherwise constitute non-performance of a contractual obligation, or entitle the Holders of the Ordinary Senior Debt Securities of such series to any remedies, which are hereby expressly waived.

(c) No exercise of a resolution tool or resolution power by the Relevant Resolution Authority or any action in compliance therewith shall constitute an Event of Default.

Section 5.02. *Acceleration of Maturity; Rescission and Annulment.* If any Event of Default shall occur in relation to any series of Ordinary Senior Debt Securities, the Trustee or the Holders of at least 25% in outstanding principal amount of the Ordinary Senior Debt Securities of that series may at their discretion declare that the Ordinary Senior Debt Securities of such series and all interest then accrued thereon shall be forthwith due and payable, whereupon the same shall become immediately due and payable at its early termination amount (the “**Early Termination Amount**”) (which shall be its principal amount, unless otherwise specified pursuant to Section 3.01), together with all interest (if any) accrued thereon, without presentment, demand, protest or other notice of any kind, all of which the Company will expressly waive, anything contained in the Ordinary Senior Debt Securities of such series to the contrary notwithstanding, unless, prior thereto, all Events of Default in respect of the Ordinary Senior Debt Securities of such series shall have been cured.

At any time after such a declaration of acceleration with respect to Ordinary Senior Debt Securities of any series has been made but before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holder or Holders of a majority in aggregate principal amount of the Outstanding Ordinary Senior Debt Securities of such series, by written notice to the Company and the Trustee, may rescind or annul such declaration of acceleration and its consequences (including any Event of Default under another series of Ordinary Senior Debt Securities arising therefrom) but only if

(a) the Company has paid or deposited with the Trustee a sum sufficient to pay

(i) the principal of (and premium, if any, on) any Ordinary Senior Debt Securities of such series which have become due otherwise than by such declaration of acceleration and any due and payable interest, and overdue interest and Additional Amounts, if any, thereon at the rate or rates prescribed therefor in such Ordinary Senior Debt Securities,

(ii) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and



(b) all Events of Default with respect to Ordinary Senior Debt Securities of such series, other than the non-payment of the principal of and any premium and interest on, and any Additional Amounts with respect to Ordinary Senior Debt Securities of such series which shall have become due solely by such declaration of acceleration, have been cured or waived as provided by Section 5.13.

No such rescission or annulment shall affect any subsequent default or impair any right consequent thereon.

Section 5.03. *Collection of Indebtedness and Suits for Enforcement by Trustee.* If an Event of Default with respect to Ordinary Senior Debt Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Ordinary Senior Debt Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Ordinary Senior Debt Securities Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy, including the institution of proceedings in Spain (but not elsewhere) for the winding-up of the Company.

The Holders of Ordinary Senior Debt Securities by their acceptance thereof will be deemed to have waived any right of set-off or counterclaim or combination of accounts with respect to the Ordinary Senior Debt Securities or this Ordinary Senior Debt Securities Indenture (or between the obligations under or in respect of any Ordinary Senior Debt Securities and any liability owed by a Holder to the Company) that they might otherwise have against the Company, whether before or during a winding up of the Company.

Notwithstanding the foregoing, failure to make any payment in respect of a series of Ordinary Senior Debt Securities shall not be an Event of Default in respect of such Ordinary Senior Debt Securities if such payment is withheld or refused (i) in order to comply with any law or regulation or with the order of any court of competent jurisdiction, in each case applicable to such payment, or (ii) in case of doubt as to the validity or applicability of any such law, regulation or order, in accordance with advice given as to such validity or applicability at any time before the expiry of such period of 14 days by independent legal advisers acceptable to the Trustee, *provided, however*, that the Trustee may by notice to the Company require the Company to take such action (including but not limited to proceedings for a declaration by a court of competent



200FX&=8eN45arBs6

jurisdiction) as the Trustee may be advised in an Opinion of Counsel, upon which opinion the Trustee may conclusively rely, is appropriate and reasonable in the circumstances to resolve such doubt, in which case the Company shall forthwith take and expeditiously proceed with such action and shall be bound by any final resolution of the doubt resulting therefrom. If any such action results in a determination that the relevant payment can be made without violating any applicable law, regulation or order then the provisions of the preceding sentence shall cease to have effect and the payment shall become due and payable on the expiration of 14 days or seven days after the Trustee gives written notice to the Company informing it of such resolution.

No recourse for the payment of the principal of (or premium, if any) or interest, if any, on any Senior Debt Security, or for any claim based thereon and no recourse under or upon any obligation, covenant or agreement of the Company in this Ordinary Senior Debt Securities Indenture, or in any Senior Debt Security or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, officer or director, past, present or future, of the Company of any successor corporation of either the Company, either directly or through the Company or any successor corporation of either, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that to the extent lawful all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Ordinary Senior Debt Securities Indenture and the issue of the Ordinary Senior Debt Securities of a series.

Section 5.04. *Trustee May File Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition, winding-up or other judicial proceeding relative to the Company or any other obligor upon the Ordinary Senior Debt Securities of any series or to the property of the Company or such other obligor or their creditors (other than under or in connection with a scheme of amalgamation or reconstruction not involving bankruptcy or insolvency), the Trustee (irrespective of whether the principal of the Ordinary Senior Debt Securities of such series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal (and premium, if any) or interest, if any) and Additional Amounts shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys and other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder of a Senior Debt Security to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to such Holders or holders, to first pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due to the Trustee under Section 6.08.





Subject to Article 8 and Section 9.02, nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of any Senior Debt Security any plan of reorganization, arrangement, adjustment, or composition affecting any Ordinary Senior Debt Securities or the rights of any Holder of any Senior Debt Security or to authorize the Trustee to vote in respect of the claim of any such Holder in any such proceeding.

Section 5.05. *Trustee May Enforce Claims Without Possession of Ordinary Senior Debt Securities.* All rights of action and claims under this Ordinary Senior Debt Securities Indenture or the Ordinary Senior Debt Securities may be prosecuted and enforced by the Trustee without the possession of any of the Ordinary Senior Debt Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel be for the ratable benefit of the Holders of the Ordinary Senior Debt Securities in respect of which such judgment has been recovered.

Section 5.06. *Application of Money Collected.* Any money collected by the Trustee pursuant to this Article or, after an Event of Default, any money or other property distributable in respect of the Company's obligations under this Ordinary Senior Debt Securities Indenture, in respect of any series of Ordinary Senior Debt Securities shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (and premium, if any) or interest, if any, and Additional Amounts upon presentation of such Ordinary Senior Debt Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts applicable to such series of Ordinary Senior Debt Securities due and owing to the Trustee (including any predecessor Trustee) under Section 6.08;

SECOND: To the payment of the amounts then due and unpaid for principal of (and premium, if any) and interest, if any, and Additional Amounts on such series of Ordinary Senior Debt Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Ordinary Senior Debt Securities for principal (and premium, if any) and interest, if any, respectively; and

THIRD: To the payment of the balance, if any, to the Company or any other Person or Persons legally entitled thereto.

Section 5.07. *Limitation on Suits.* No Holder of any Senior Debt Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Ordinary Senior Debt Securities Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to Ordinary Senior Debt Securities of the same series specifying such Event of Default and stating that such notice is a "Notice of Default" hereunder;



(b) the Holders of not less than 25% in aggregate principal amount of the Outstanding Ordinary Senior Debt Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name, as Trustee hereunder;

(c) such Holder of a Senior Debt Security has offered to the Trustee reasonable indemnity and/or security satisfactory to it (as determined by the Trustee in its sole discretion) against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Ordinary Senior Debt Securities of such series;

it being understood and intended that no one or more Holders of Ordinary Senior Debt Securities of a particular series shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Ordinary Senior Debt Securities Indenture to affect, disturb or prejudice the rights of any other such Holders or holders, or to obtain or to seek to obtain priority or preference over any other such Holders or holders or to enforce any right under this Ordinary Senior Debt Securities Indenture, except in the manner herein provided and for the equal and ratable benefit of all Holders of Ordinary Senior Debt Securities of such series.

Section 5.08. *Unconditional Right of Holders to Receive Principal, Premium and Interest, if Any and Additional Amounts.* Notwithstanding any other provision in this Ordinary Senior Debt Securities Indenture, the Holder of any Senior Debt Security shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and (subject to Section 3.07) interest, if any, and Additional Amounts on such Senior Debt Security on the respective Stated Maturities as expressed in such Senior Debt Security (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 5.09. *Restoration of Rights and Remedies.* If the Trustee or any Holder of any Senior Debt Security has instituted any proceeding to enforce any right or remedy under this Ordinary Senior Debt Securities Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders of Ordinary Senior Debt



Securities shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders of Ordinary Senior Debt Securities shall continue as though no such proceeding had been instituted.

Section 5.10. *Rights and Remedies Cumulative.* Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Ordinary Senior Debt Securities in the last paragraph of Section 3.06, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Ordinary Senior Debt Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11. *Delay or Omission Not Waiver.* No delay or omission of the Trustee or of any Holder of any Senior Debt Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders of Ordinary Senior Debt Securities may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders of Ordinary Senior Debt Securities, as the case may be.

Section 5.12. *Control by Holders.* The Holders of a majority in aggregate principal amount of the Outstanding Ordinary Senior Debt Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee hereunder, or exercising any trust or power conferred on the Trustee hereunder with respect to the Ordinary Senior Debt Securities of such series, provided that

(a) such direction shall not be in conflict with any rule of law or with this Ordinary Senior Debt Securities Indenture or with the Ordinary Senior Debt Securities of any series;

(b) the Trustee shall not determine that the action so directed would be unjustly prejudicial to the Holders of any Ordinary Senior Debt Securities of any series not taking part in such direction with respect to which the Trustee is acting as the Trustee; and

(c) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Section 5.13. *Waiver of Past Defaults.* The Trustee may without prejudice to its rights in respect of any subsequent Event of Default from time to time and at any time waive any Event of Default or authorize any proposed Event of Default by the Company, provided that in its opinion the interests of the Holders shall not be materially prejudiced thereby and, provided, further, that the Trustee shall not exercise any powers conferred on it by this clause in contravention of any notice in writing to the Trustee made pursuant



to Section 5.07 hereof but no such notice shall affect any waiver or authorization previously given or made. The Holders of not less than a majority in aggregate principal amount of the Outstanding Ordinary Senior Debt Securities of any series may on behalf of the Holders of all the Ordinary Senior Debt Securities of such series waive any past Event of Default hereunder with respect to such series and its consequences, except an Event of Default:

(a) in the payment of the principal of (or premium, if any) or interest, if any, and Additional Amounts on any Senior Debt Security of such series, or

(b) in respect of a covenant or provision hereof which under Article 9 cannot be modified or amended without the consent of the Holder of each Outstanding Senior Debt Security of such series affected.

Upon any such waiver, such Event of Default shall cease to exist, and any Event of Default with respect to any series arising therefrom shall be deemed to have been cured and not to have occurred for every purpose of this Ordinary Senior Debt Securities Indenture, but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

Section 5.14. *Undertaking for Costs.* All parties to this Ordinary Senior Debt Securities Indenture agree, and each Holder of any Senior Debt Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Ordinary Senior Debt Securities Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant to such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder or group of Holders holding in the aggregate more than 10% in principal amount of the Outstanding Ordinary Senior Debt Securities of any series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest, if any, on any Senior Debt Security on or after the respective Stated Maturities expressed in such Senior Debt Security (or, in the case of redemption, on or after the Redemption Date).

## ARTICLE 6 THE TRUSTEE

Section 6.01. *Certain Duties and Responsibilities.* (a) Except during the continuance of an Event of Default,

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Ordinary Senior Debt Securities Indenture, and no implied covenants or obligations shall be read into this Ordinary Senior Debt Securities Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Ordinary Senior Debt Securities Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Ordinary Senior Debt Securities Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts, statements, opinions or conclusions stated therein).



200FX&=8eN46MaHL@

(b) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Ordinary Senior Debt Securities Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(c) No provision of this Ordinary Senior Debt Securities Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(i) this subsection (c) shall not be construed to limit the effect of subsections (a) or (d) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Ordinary Senior Debt Securities of any series, determined as provided herein, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Ordinary Senior Debt Securities Indenture with respect to the Ordinary Senior Debt Securities of such series.

(d) no provision of this Ordinary Senior Debt Securities Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(e) Whether or not therein expressly so provided, every provision of this Ordinary Senior Debt Securities Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.01.



Section 6.02. *Spanish Tax Procedures and Obligations of the Trustee.* In connection with each payment made on any Payment Date (as defined in Appendix 1 attached hereto) in respect of the issued Ordinary Senior Debt Securities hereunder, the Trustee or Paying Agent shall comply with the tax procedures set forth in Appendix 1 hereto. The Trustee or Paying Agent shall have no duty or responsibility to comply with other Spanish tax obligations arising out of this Ordinary Senior Debt Securities Indenture. The Company shall be responsible for the payment of any and all amounts due under the Ordinary Senior Debt Securities. Therefore, the Trustee or Paying Agent shall not be liable for any amounts owed to any person due to its failure to properly comply with the tax procedures referred to in this Section 6.02 and Appendix 1 hereto, except such as may result from the negligence, willful misconduct or fraud of the Trustee or Paying Agent or any of its agents or employees. The Trustee or Paying Agent may request and rely conclusively upon any instructions from the Company in respect of any action necessary or required to be taken by the Trustee or Paying Agent pursuant to this Section 6.02 and Appendix 1 hereto; provided, however, in no event shall the Trustee or Paying Agent be required to expend or risk its own funds in the performance of any of its duties pursuant to this Section 6.02 and Appendix 1 hereto, or be obligated to take any legal or other action which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with acceptable indemnification and security.

Section 6.03. *Notice of Defaults.* Within 90 days after the occurrence of any Event of Default hereunder with respect to Ordinary Senior Debt Securities of any series of which a Responsible Officer of the Trustee has received written notice of such Event of Default the Trustee shall transmit in the manner and to the extent provided in Section 1.06 to Holders of Ordinary Senior Debt Securities of such series notice of such Event of Default hereunder of which the Trustee has received written notice, unless such Event of Default shall have been cured or waived; *provided, however,* that, the Trustee shall be protected in withholding such notice if it determines in good faith that the withholding of such notice is in the interest of the Holders of Ordinary Senior Debt Securities of such series.

Section 6.04. *Certain Rights of Trustee.* Subject to the provisions of Section 6.01:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, Officer's Certificate, or any other certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other evidence of indebtedness or other paper or document (whether in its original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors of the Company may be sufficiently evidenced by a Board Resolution;



(c) whenever in the administration of this Ordinary Senior Debt Securities Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate and/or an Opinion of Counsel;

(d) the Trustee may consult with counsel of its own selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Ordinary Senior Debt Securities Indenture at the request or direction of any of the Holders pursuant to this Ordinary Senior Debt Securities Indenture, unless such Holders shall have offered to the Trustee reasonable security and/or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney; at the sole reasonable cost and expense of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation; provided that the Trustee shall not be entitled to such information which the Company is prevented from disclosing as a matter of law or contract;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(h) the Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Ordinary Senior Debt Securities Indenture, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(i) anything in this Ordinary Senior Debt Securities Indenture notwithstanding, in no event shall the Trustee be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to loss or profit), even if the Trustee has been advised as to the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in negligence or otherwise;



(j) the Trustee shall not be liable with respect to any Losses arising from action taken or omitted to be taken by it in good faith in accordance with any instruction or communication received by email from any person reasonably believed by the Trustee to be authorized by the Company to send such instruction or communication, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(k) the Trustee shall not be deemed to have notice of any Event of Default unless a Responsible Officer of the Trustee has received written notice of such an Event of Default at the Corporate Trust Office of the Trustee, and such notice references the Ordinary Senior Debt Securities and/or this Ordinary Senior Debt Securities Indenture;

(l) the Trustee shall not be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, strikes, work stoppages, civil or military disturbances, nuclear or natural catastrophes, fire, riot, embargo, loss or malfunctions of utilities, communications or computer (software and hardware) services, government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Ordinary Senior Debt Securities Indenture;

(m) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder; and

(n) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Ordinary Senior Debt Securities Indenture, which certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

Section 6.05. *Not Responsible for Recitals or Issuance of Ordinary Senior Debt Securities.* The recitals contained herein and in the Ordinary Senior Debt Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Ordinary Senior Debt Securities Indenture or of the Ordinary Senior Debt Securities, except that the Trustee represents and warrants that it has duly authorized, executed and delivered this Ordinary Senior Debt Securities Indenture. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of Ordinary Senior Debt Securities or the proceeds thereof. The Trustee shall not be responsible to make any calculation with respect to any matter under this Ordinary Senior Debt Securities Indenture other than as specifically provided for herein. The Trustee shall have no duty to monitor or investigate the Company's compliance with or the breach of, or cause to be performed or observed, any representation, warranty, or covenant, or agreement of any Person, other than the Trustee, made in this Ordinary Senior Debt Securities Indenture.





No provision of this Ordinary Senior Debt Securities Indenture shall be deemed to impose any duty or obligation on the Trustee to perform any act or acts, receive or obtain any interest in property or exercise any interest in property, or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, taxation or other consequences that, in the sole determination of the Trustee, are adverse to the Trustee, or in which the Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, to receive or obtain any such interest in property or to exercise any such right, power, duty or obligation.

Section 6.06. *May Hold Ordinary Senior Debt Securities.* The Trustee, any Authenticating Agent, any Paying Agent, any Senior Debt Security Registrar and any Calculation Agent or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Ordinary Senior Debt Securities and, subject to Section 6.09 and Section 6.14, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Senior Debt Security Registrar, Calculation Agent or such other agent.

Section 6.07. *Money Held in Trust.* Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

Section 6.08. *Compensation and Reimbursement.* The Company agrees:

(a) to pay to the Trustee from time to time compensation for all services rendered by it hereunder as agreed upon in writing by the Company from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, to reimburse the Trustee for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Ordinary Senior Debt Securities Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as shall be determined by a court of competent jurisdiction to have been caused by its own negligence or bad faith; and

(c) to indemnify the Trustee (which for purposes of this subparagraph Section 6.08(c) shall be deemed to include its directors, officers, employees and agents) or any predecessor Trustee for, and to hold it harmless against, any and all loss, liability, claim, damage or expense (including legal fees and expenses) and taxes (other than taxes based upon, measured by or determined by the income of the Trustee) incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder including the costs and expenses of defending itself against any claim (whether asserted by the Company, or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, or in connection with enforcing the provisions of this Section, but excluding any tax liabilities of the Trustee in respect of its net profits.



In addition to, but without prejudice to its other rights under this Ordinary Senior Debt Securities Indenture, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.01, the fees, costs and expenses (including the charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law.

The Trustee shall notify the Company in writing of the commencement of any action or claim in respect of which indemnification may be sought promptly after a Responsible Officer of the Trustee becomes aware of such commencement (provided that the failure to make such notification shall not affect the Trustee's rights hereunder) and the Company shall be entitled to participate in, and to the extent it shall wish, to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Trustee. If the Company and the Trustee are being represented by the same counsel and the Company has assumed the defense of the claim, the Trustee shall not be authorized to settle a claim without the written consent of the Company, which consent shall not be unreasonably withheld.

As security for the performance of the obligations of the Company under this Section, the Trustee shall have a senior lien to which the Ordinary Senior Debt Securities are hereby made subordinate, upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (or premium, if any) or interest, if any, on the Ordinary Senior Debt Securities.

"Trustee" for purposes of this Section shall include any predecessor Trustee; provided, however, that the negligence, willful misconduct or bad faith of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

The Trustee's rights to payment of its fees, reimbursement and indemnity under, and its lien provided for in, this Section 6.08 shall survive the payment in full of the Ordinary Senior Debt Securities, the satisfaction and discharge of this Ordinary Senior Debt Securities Indenture, the resignation or removal of the Trustee, the termination for any reason of this Ordinary Senior Debt Securities Indenture and the exercise of the Bail-in Power and the other relevant resolution tools by the Relevant Resolution Authority.

Section 6.09. *Disqualification; Conflicting Interests.* If the Trustee has or shall acquire a conflicting interest within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, Section 310(b) of the Trust Indenture Act and this Ordinary Senior Debt Securities Indenture.

Section 6.10. *Corporate Trustee Required; Eligibility.* There shall at all times be a Trustee hereunder with respect to each series which shall be a Person organized and doing business under the laws of the United States, any State thereof or the District of



Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal or State or District of Columbia authority and having a corporate trust office or agency in the Borough of Manhattan, The City of New York, New York. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article 6.

Section 6.11. *Resignation and Removal; Appointment of Successor.* (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 6.12.

(b) The Trustee may resign at any time with respect to the Ordinary Senior Debt Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.12 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Ordinary Senior Debt Securities of such series.

(c) The Trustee may be removed at any time with respect to the Ordinary Senior Debt Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Ordinary Senior Debt Securities of such series delivered to the Trustee and to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.12 shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the Trustee may petition at the expense of the Company any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Ordinary Senior Debt Securities of such series.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 6.09 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Senior Debt Security of the series as to which the Trustee has a conflicting interest for at least six months, or

(ii) the Trustee shall cease to be eligible under Section 6.10 and shall fail to resign after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Senior Debt Security for at least six months, or

(iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge, or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, or

(iv) the Trustee shall fail to perform its obligations to the Company under this Ordinary Senior Debt Securities Indenture in any material respect,



then, in any such case, (A) the Company, by a Board Resolution, may remove the Trustee with respect to any or all series of Ordinary Senior Debt Securities or (B) subject to Section 5.14 (and except in the case of subparagraph 6.11(d)(iv) above), any Holder who has been a bona fide Holder of a Senior Debt Security for at least six months (and, in the case of clause (d)(i) above, who is a Holder of a Senior Debt Security of the series as to which the Trustee has a conflicting interest) may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Ordinary Senior Debt Securities and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Ordinary Senior Debt Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Ordinary Senior Debt Securities of such series (it being understood that any successor Trustee may be appointed with respect to the Ordinary Senior Debt Securities of one or more or all of such series and at any time there shall be only one Trustee with respect to the Ordinary Senior Debt Securities of any particular series), and shall comply with the applicable requirements of Section 6.12. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Ordinary Senior Debt Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Ordinary Senior Debt Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 6.12, become the successor Trustee with respect to the Ordinary Senior Debt Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Ordinary Senior Debt Securities of any series shall have been so appointed by the Company or the Holders of Ordinary Senior Debt Securities of such series and accepted appointment in the manner hereinafter required by Section 6.12, any Holder who has been a bona fide Holder of a Senior Debt Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Ordinary Senior Debt Securities of such series.

(f) The Company shall give notice to Holders of each resignation and each removal of the Trustee with respect to the Ordinary Senior Debt Securities of any series and each appointment of a successor Trustee with respect to the Ordinary Senior Debt Securities of any series to the Holders in the manner and to the extent provided in Section 1.06. Each notice shall include the name of the successor Trustee with respect to the Ordinary Senior Debt Securities of such series and the address of its Corporate Trust Office.



Section 6.12. *Acceptance of Appointment by Successor.* (a) In case of the appointment hereunder of a successor Trustee with respect to all Ordinary Senior Debt Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges and subject to its lien provided for in Section 6.08, execute and deliver an instrument transferring to such successor Trustee, all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Ordinary Senior Debt Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Ordinary Senior Debt Securities of such series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (i) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Ordinary Senior Debt Securities of such series to which the appointment of such successor Trustee relates, (ii) if the retiring Trustee is not retiring with respect to all Ordinary Senior Debt Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Ordinary Senior Debt Securities of such series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (iii) shall add to or change any of the provisions of this Ordinary Senior Debt Securities Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Ordinary Senior Debt Securities of such series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Ordinary Senior Debt Securities of such series to which the appointment of such successor Trustee relates, subject to the lien provided for in Section 6.08.



(c) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in subsection (a) or (b) of this Section 6.12, as the case may be.

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article 6.

Section 6.13. *Merger, Conversion, Consolidation or Succession Business.* Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such Person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Ordinary Senior Debt Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Ordinary Senior Debt Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Ordinary Senior Debt Securities.

Section 6.14. *Preferential Collection of Claims.* If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Ordinary Senior Debt Securities of a series), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

Section 6.15. *Appointment of Authenticating Agent.* The Trustee may at any time appoint an Authenticating Agent or Agents with respect to one or more series of Ordinary Senior Debt Securities which shall be authorized to act on behalf of the Trustee to authenticate Ordinary Senior Debt Securities of such series upon original issue, or issued upon exchange, registration of transfer or partial redemption thereof or in lieu of destroyed, lost or stolen Ordinary Senior Debt Securities, and Ordinary Senior Debt Securities so authenticated shall be entitled to the benefits of this Ordinary Senior Debt Securities Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Ordinary Senior Debt Securities Indenture to the authentication and delivery of Ordinary Senior Debt Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation or national banking association organized and doing business under the laws of the United States, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or State or District of Columbia authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the



requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.15, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any Person into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Person succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such Person shall be otherwise eligible under this Section 6.15, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.15, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall give notice to the Holders of Ordinary Senior Debt Securities in the manner and to the extent provided in Section 1.06. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 6.15.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 6.15.

If an appointment with respect to one or more series is made pursuant to this Section, the Ordinary Senior Debt Securities of such series may have endorsed thereon, in lieu of the Trustee's certificate of authentication, an alternate certificate of authentication in substantively the following form:

This is one of the Ordinary Senior Debt Securities referred to in the within-mentioned Ordinary Senior Debt Securities Indenture.

THE BANK OF NEW YORK MELLON,  
as Trustee

By: \_\_\_\_\_  
as Authenticating Agent



Section 6.16. *Appointment of Additional Trustees.* The Company may appoint a Trustee for a particular series of Ordinary Senior Debt Securities other than the Trustee named in the first paragraph of this Ordinary Senior Debt Securities Indenture by executing and delivering an indenture supplemental hereto where such Trustee accepts such appointment as contemplated by Section 3.01(w) and Section 9.01(k) (it being understood that at any time there shall be only one Trustee with respect to the Ordinary Senior Debt Securities of any particular series); *provided* that, at the time of such acceptance, such Trustee shall be qualified and eligible under this Article 6. Upon such acceptance, such Trustee shall be vested with all the rights, powers, trusts and duties of a Trustee under this Ordinary Senior Debt Securities Indenture with respect to the Ordinary Senior Debt Securities of such series.

Section 6.17. *Tax Withholding.* Any amounts to be paid by the Company on the Ordinary Senior Debt Securities shall be paid net of any deduction or withholding imposed or required pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (or any law implementing such an intergovernmental agreement) (a “**FATCA Withholding Tax**”), and the Company shall not be required to pay Additional Amounts on account of any FATCA Withholding Tax.

Any Paying Agent shall be entitled to make a deduction or withholding from any payment which it makes under the Ordinary Senior Debt Securities and this Ordinary Senior Debt Securities Indenture for or on account of (i) any present or future taxes, duties or charges if and to the extent so required by any applicable law and (ii) any FATCA Withholding Tax (together, “**Applicable Law**”). In either case, the Paying Agent shall make any payment after a deduction or withholding has been made pursuant to Applicable Law and shall report to the relevant authorities the amount so deducted or withheld. In all cases, the Paying Agent shall have no obligation to gross up any payment made subject to any deduction or withholding pursuant to Applicable Law. In addition, amounts deducted or withheld by the Paying Agent as described in this paragraph will be treated as paid to the Holder of the Ordinary Senior Debt Securities, and the Company will not pay Additional Amounts in respect of such deduction or withholding, except to the extent required under Section 10.04.

ARTICLE 7  
HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 7.01. *Company to Furnish Trustee Names and Addresses of Holders.* The Company, with respect to any series of Ordinary Senior Debt Securities, will furnish or cause to be furnished to the Trustee





200FX&=&eN44@r0L:

(a) not more than 15 days after each Regular Record Date (or after each of the dates to be specified for such purpose for non-interest bearing Ordinary Senior Debt Securities and Ordinary Senior Debt Securities on which interest is paid less frequently than quarterly as contemplated by Section 3.01), a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Ordinary Senior Debt Securities as of such Regular Record Date or such specified date, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished.

The Company need not furnish or cause to be furnished to the Trustee pursuant to this Section 7.01 the names and addresses of Holders of Ordinary Senior Debt Securities so long as the Trustee acts as Senior Debt Security Registrar with respect to such series of Ordinary Senior Debt Securities.

Section 7.02. *Preservation of Information; Communication to Holders.* (a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders (i) contained in the most recent list furnished to the Trustee as provided in Section 7.01 and (ii) received by the Trustee in its capacity as Paying Agent or Senior Debt Security Registrar (if so acting). The Trustee may dispose of any list furnished to it as provided in Section 7.01 upon receipt of a new list so furnished.

(b) The rights of the Holders of Ordinary Senior Debt Securities of any series to communicate with other Holders with respect to their rights under this Ordinary Senior Debt Securities Indenture or under the Ordinary Senior Debt Securities, and the corresponding rights and privileges of the Trustee, shall be as provided by the Trust Indenture Act.

(c) Every Holder, by receiving and holding a Senior Debt Security, agrees with the Company and the Trustee that neither the Company, nor the Trustee nor any agent of any of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with subsection (b) or otherwise made pursuant to the Trust Indenture Act.

Section 7.03. *Reports by Trustee.* (a) On or before May 15 in each year following the date hereof, so long as any Ordinary Senior Debt Securities are Outstanding hereunder, the Trustee shall transmit to Holders as provided in the Trust Indenture Act a brief report dated as of a date required by and in compliance with the Trust Indenture Act.

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each securities exchange upon which the Trustee has been notified that the Ordinary Senior Debt Securities are listed, with the Commission and with the Company. The Company will notify the Trustee when Ordinary Senior Debt Securities are listed on any securities exchange.



Section 7.04. *Reports by the Company.* The Company shall:

(a) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of such Sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate);

(b) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Ordinary Senior Debt Securities Indenture as may be required from time to time by such rules and regulations. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate); and

(c) transmit to Holders, in the manner and to the extent required by the Trust Indenture Act, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to subsections (a) and (b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

(d) The Trustee may conclusively presume that the Company is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise is complying with such reporting requirements unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office of the Trustee a written notification from the Company stating otherwise. The Trustee shall have no duty to examine any information, reports or other documents filed by the Company pursuant to Section 13 or 15(d) of the Exchange Act, and need make no determination as to whether they comply with the requirements of this Section 7.04, its sole duty in respect thereof being to place them in its files and make them available for inspection by any Holder upon reasonable request during normal business hours.



ARTICLE 8  
CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER

Section 8.01. *Company May Consolidate, Etc. Only on Certain Terms.* The Company may, without the consent of Holders of any Ordinary Senior Debt Securities of any series Outstanding under this Ordinary Senior Debt Securities Indenture, consolidate or amalgamate with or merge into any other corporation or convey or transfer or lease its properties and assets substantially as an entirety to any Person, *provided that*:

(a) the corporation formed by or into which the Company is consolidated, amalgamated or merged or the Person which acquires by conveyance or transfer the properties and assets of the Company substantially as an entirety (i) shall be a company organized and existing under the laws of any part of the European Union, and (ii) shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, in the case of the Company, the due and punctual payment of the principal of (and premium, if any), interest and Additional Amounts, if any, on all the Ordinary Senior Debt Securities in accordance with the provisions of such Ordinary Senior Debt Securities and this Ordinary Senior Debt Securities Indenture, and the performance of every covenant of this Ordinary Senior Debt Securities Indenture on the part of the Company to be performed or observed;

(b) immediately after giving effect to such consolidation, amalgamation, merger, conveyance or transfer, no Event of Default and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and

(c) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger, conveyance or transfer and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 8.02. *Successor Corporation Substituted.* In the event of any merger, consolidation, sale, conveyance permitted by Section 8.01 above, Additional Amounts under the Ordinary Senior Debt Securities will thereafter be payable in respect of taxes imposed by the acquiring corporation's, or the resulting corporation's, jurisdiction of incorporation or tax residence (subject to exceptions equivalent to those that apply to the obligation to pay Additional Amounts pursuant to Section 10.04 in respect of taxes imposed by the laws of the Kingdom of Spain) rather than taxes imposed by the Kingdom of Spain. Additional Amounts with respect to payments of interest or principal due prior to the date of such merger, consolidation, sale, conveyance or lease will be payable only in respect of taxes imposed by the Kingdom of Spain. The acquiring or resulting corporation, as the case may be, will also be entitled to redeem the Ordinary Senior Debt Securities in the circumstances described in Section 11.08 with respect to any change or amendment to, or change in the application or official interpretation of the laws or regulations of such jurisdiction, which change or amendment must occur subsequent to the date of any merger, consolidation, sale, conveyance or lease permitted by Section 8.01



if the successor entity is not incorporated or tax resident in the Kingdom of Spain. In the event of assumption of the Company's obligations in connection with a merger, consolidation, sale or conveyance of substantially all of its assets, the Company shall be released from all obligations and covenants under this Ordinary Senior Debt Securities Indenture or the Ordinary Senior Debt Securities, as the case may be, and the successor corporation formed by such consolidation or amalgamation or into which the Company is merged or to which such conveyance or transfer is made shall succeed to and be substituted for, and may exercise every right and power of, the Company under this Ordinary Senior Debt Securities Indenture with the same effect as if such successor corporation had been named as the Company.

Section 8.03. *Assumption of Obligations.* Subject to the prior consent of the European Central Bank, if required, any direct or indirect subsidiary of the Company may assume the obligations of the Company (a "successor entity") under the Ordinary Senior Debt Securities of any series without the consent of the Holders of such series, *provided that:*

(a) the successor entity shall expressly assume such obligations by an amendment to this Ordinary Senior Debt Securities Indenture, executed by the Company and such successor entity, if applicable, and delivered to the Trustee, in form satisfactory to the Trustee and the Company shall, by amendment to this Ordinary Senior Debt Securities Indenture, unconditionally guarantee all of the obligations of such successor entity under the Ordinary Senior Debt Securities of such series and this Ordinary Senior Debt Securities Indenture as so modified by such amendment;

(b) immediately after giving effect to such assumption of obligations, no Event of Default and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and

(c) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such assumption complies with this Article and that all conditions precedent herein provided for relating to such assumption have been complied with.

Upon any such assumption, the successor entity shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Ordinary Senior Debt Securities Indenture with respect to any such Ordinary Senior Debt Securities with the same effect as if such successor entity had been named as the Company in this Ordinary Senior Debt Securities Indenture, and the Company or any legal and valid successor corporation which shall theretofore have become such in the manner prescribed herein, shall be released from all liability as obligor upon any such Ordinary Senior Debt Securities except as described in the following paragraph.

In the event of any assumption, Additional Amounts under the Ordinary Senior Debt Securities will be payable in respect of taxes imposed by the assuming corporation's jurisdiction of incorporation or tax residence (subject to exceptions equivalent to those that apply to the obligation to pay Additional Amounts pursuant to Section 10.04 in



respect of taxes imposed by the laws of the Kingdom of Spain) on payments of interest or principal made on or subsequent to the date of such assumption. Additional Amounts with respect to payments of interest or principal due prior to the date of such assumption will be payable only in respect of taxes imposed by the Kingdom of Spain. The wholly-owned subsidiary that assumes the obligations of the Company in such cases will also be entitled to redeem the Securities in the circumstances described in Section 11.08 with respect to any change or amendment to, or change in the application or official interpretation of the laws or regulations of such jurisdiction, which change or amendment must occur subsequent to the date of any such assumption if the assuming entity is not incorporated or tax resident in the Kingdom of Spain. In the event of any such assumption, all obligations of the Company under the Securities shall immediately be discharged.

ARTICLE 9  
SUPPLEMENTAL INDENTURES

Section 9.01. *Supplemental Indentures without Consent of Holders.* Without the consent of any Holders and the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

- (a) to evidence the succession of another corporation to the Company and the assumption by any such successor of the covenants of the Company herein and in the Ordinary Senior Debt Securities;
- (b) to add to the covenants of the Company for the benefit of the Holders of all or any series of Ordinary Senior Debt Securities (and, if such covenants are to be for the benefit of fewer than all series of Ordinary Senior Debt Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Company;
- (c) to add any additional Events of Default;
- (d) to change or eliminate any of the provisions of this Ordinary Senior Debt Securities Indenture, or any supplemental indenture, provided that any such change or elimination shall become effective only when there is no outstanding Senior Debt Security of any series created prior to the execution of such supplemental indenture that is entitled to the benefit of such provision or as to which such supplemental indenture would apply;
- (e) to secure the Ordinary Senior Debt Securities;
- (f) to establish the form or terms of Ordinary Senior Debt Securities of any series as permitted by Section 2.01 or Section 3.01;



(g) to change any Place of Payment, so long as the Place of Payment as required by Section 3.01 is maintained in The City of New York;

(h) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein or in any supplemental indenture;

(i) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Ordinary Senior Debt Securities of one or more series and to add to or change any of the provisions of this Ordinary Senior Debt Securities Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.12(b);

(j) to change or eliminate any provision of this Ordinary Senior Debt Securities Indenture as permitted by Section 1.08;

(k) to name a Trustee for a particular series of Ordinary Senior Debt Securities other than the Trustee named in the first paragraph of this Ordinary Senior Debt Securities Indenture and to provide for the appropriate changes related to such appointment for a particular series of Ordinary Senior Debt Securities; or

(l) with respect to any Senior Debt Security (including a Global Security) issued on or after the date hereof, to amend any such Senior Debt Security to conform to the description of the terms of such Senior Debt Security in the prospectus, prospectus supplement, product supplement, pricing supplement or any other similar offering document related to the offering of such Senior Debt Security.

Section 9.02. *Supplemental Indentures with Consent of Holders.* With the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Ordinary Senior Debt Securities of each series affected by such supplemental Ordinary Senior Debt Securities Indenture (voting as a class), by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Ordinary Senior Debt Securities Indenture or of modifying in any manner the rights of the Holders of Ordinary Senior Debt Securities of such series under this Ordinary Senior Debt Securities Indenture; *provided, however,* that no such supplemental indenture may, without the consent of the Holder of each Outstanding Senior Debt Security affected thereby,

(a) change the Stated Maturity, if any, of any principal amount or any interest amounts in respect of any such Senior Debt Security, reduce the principal amount thereof or the rate of interest and Additional Amounts, if any, thereon, or any premium payable upon the redemption thereof, or reduce the amount of principal of an Original Issue Discount Security that would be due and payable upon an acceleration of the Maturity thereof pursuant to Section 5.02, or change the obligation of the Company (or its



successor) to pay Additional Amounts pursuant to Section 10.04 (except as contemplated by Section 8.01(a) and permitted by Section 9.01(a)) on the Ordinary Senior Debt Securities, or the currency of payment of the principal amount of, premium, if any, or interest on, any such Senior Debt Security, or change the Place of Payment, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof or the date any such payment is otherwise due and payable (or, in the case of redemption, on or after the Redemption Date); or

(b) reduce the percentage in aggregate principal amount of the Outstanding Ordinary Senior Debt Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Ordinary Senior Debt Securities Indenture or of certain defaults hereunder and their consequences) provided for in this Ordinary Senior Debt Securities Indenture, or

(c) modify any of the provisions of this Section 9.02 or Section 5.13 except to increase any such percentage or to provide that certain other provisions of this Ordinary Senior Debt Securities Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Senior Debt Security affected thereby; *provided, however*, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to the "Trustee" and concomitant changes in this Section, or the deletion of this proviso, in accordance with the requirements of Section 6.12(b) and Section 9.01(j), or

(d) change in any manner adverse to the interests of the Holders of any Ordinary Senior Debt Securities the terms and conditions of the obligations of the Company in respect of the due and punctual payment of any amounts due and payable on the Ordinary Senior Debt Securities.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

A supplemental indenture which changes or eliminates any covenant or other provision of this Ordinary Senior Debt Securities Indenture which has expressly been included solely for the benefit of one or more particular series of Ordinary Senior Debt Securities, or which modifies the rights of the Holders of Ordinary Senior Debt Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Ordinary Senior Debt Securities Indenture of the Holders of Ordinary Senior Debt Securities of any other series.

Section 9.03. *Execution of Supplemental Indentures.* In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Ordinary Senior Debt Securities Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.01) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Ordinary Senior Debt Securities



Indenture and that such supplemental indenture constitutes a legal, valid and binding obligation of the Company subject to customary exceptions. The Trustee may, but shall not be obliged to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Ordinary Senior Debt Securities Indenture or otherwise.

Section 9.04. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture under this Article, this Ordinary Senior Debt Securities Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Ordinary Senior Debt Securities Indenture for all purposes; and every Holder of Ordinary Senior Debt Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby, except as otherwise expressed therein.

Section 9.05. *Conformity with Trust Indenture Act.* Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

Section 9.06. *Reference in Ordinary Senior Debt Securities to Supplemental Indentures.* Ordinary Senior Debt Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Ordinary Senior Debt Securities of any series so modified as to conform, in the opinion of the Trustee and the Company to any such supplemental indenture, may be prepared and executed by the Company and such Ordinary Senior Debt Securities may be authenticated and delivered by the Trustee in exchange for Outstanding Ordinary Senior Debt Securities of such series.

## ARTICLE 10 COVENANTS

Section 10.01. *Payment of Principal, Premium, and Interest.* The Company covenants and agrees for the benefit of each series of Ordinary Senior Debt Securities that it will duly and punctually pay to the Holders the principal of (and premium, if any) and (subject to Section 3.07) interest, if any, and Additional Amounts on the Ordinary Senior Debt Securities of that series in accordance with the terms of the Ordinary Senior Debt Securities and this Ordinary Senior Debt Securities Indenture. Except as otherwise specified, as contemplated by Section 3.01 hereof, the Trustee shall act as Paying Agent with respect to any series of Ordinary Senior Debt Securities.

Section 10.02. *Maintenance of Office or Agency.* The Company will maintain in each Place of Payment for any series of Ordinary Senior Debt Securities an office or agency where Ordinary Senior Debt Securities of that series may be presented or surrendered for payment, where Ordinary Senior Debt Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Ordinary Senior Debt Securities of that series and this Ordinary Senior Debt Securities Indenture may be served; *provided, however,* that at





the option of the Company in the case of definitive Ordinary Senior Debt Securities of such series, payment of any interest thereon may be made by check mailed to the address of the Person entitled herein as such address shall appear in the Senior Debt Security Register. With respect to the Ordinary Senior Debt Securities of any series, such office or agency in each Place of Payment shall be specified as contemplated by Section 3.01, and if not so specified, initially shall be 225 Liberty Street, New York, New York, 10286. Unless otherwise specified pursuant to Section 3.01, the Company will maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands to or upon the Company in respect of Ordinary Senior Debt Securities of any series and this Ordinary Senior Debt Securities Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee. The Company hereby appoints the Trustee as its agent to receive all presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies (in or outside the Borough of Manhattan, The City of New York) where the Ordinary Senior Debt Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of any obligation to maintain an office or agency in each Place of Payment (except as otherwise indicated in this Section) for Ordinary Senior Debt Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 10.03. *Money for Payments to be Held in Trust.* If the Company shall at any time act as Paying Agent with respect to the Ordinary Senior Debt Securities of any series, it will, on or before each due date for payment of the principal of (and premium, if any) or interest, if any, if any, on any of the Ordinary Senior Debt Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest, if any, so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Ordinary Senior Debt Securities, it will, prior to each due date for payment of the principal of (and premium, if any) or interest, if any, on any Ordinary Senior Debt Securities of that series deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest, if any, so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or its failure so to act. Unless otherwise specified as contemplated by Section 3.01, the Trustee shall be the Company's Paying Agent. The Company will cause each Paying Agent for any series of Ordinary Senior Debt Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(a) hold all sums held by it for the payment of the principal of (and premium, if any) or interest, if any, on Ordinary Senior Debt Securities of that series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;



200FX&=&eN46KFqLE

(b) give the Trustee notice of any default by the Company (or any other obligor upon the Ordinary Senior Debt Securities of that series) in the making of any payment, when due and payable, or principal of (and premium, if any) or interest, if any, on Ordinary Senior Debt Securities of that series; and

(c) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at the time, for the purpose of obtaining the satisfaction and discharge of this Ordinary Senior Debt Securities Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (and premium, if any) or interest, if any, on any Senior Debt Security of any series and remaining unclaimed for two years after such principal (and premium, if any) or interest, if any, have become due and payable shall be paid to the Company, as the case may be, on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Senior Debt Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published at least once, in an Authorized Newspaper, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be paid to the Company.

Section 10.04. *Additional Amounts.* Unless otherwise specified pursuant to Section 3.01, all amounts payable (whether in respect of principal, redemption amount, interest or otherwise) in respect of any series of Ordinary Senior Debt Securities 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 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, unless the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law. In that event, the Company shall pay such additional amounts (“**Additional Amounts**”) as will result in receipt by the Holders of the Ordinary Senior Debt Securities of the particular series of such amounts as would have been received by them had no such withholding or deduction been required.

The Company shall not be required to pay any Additional Amounts in respect of any series of Ordinary Senior Debt Securities:

(i) to, or to a third party on behalf of, a Holder if the Holder or the beneficial owner of Ordinary Senior Debt Securities is liable for such taxes, duties, assessments or governmental charges in respect of such Ordinary Senior Debt Securities by reason of his having some connection with Spain other than the mere holding of such Ordinary Senior Debt Security; or

(ii) to, or to a third party on behalf of, a Holder in respect of whose series of Ordinary Senior Debt Securities the Company does not receive such information as may be required in order to comply with the applicable Spanish tax reporting obligations, including but not limited to the receipt in a timely manner of a duly executed and completed certificate in accordance with Law 10/2014 and Royal Decree 1065/2007, as amended, and any implementing legislation or regulation; or

(iii) to, or to a third party on behalf of, a Holder of Ordinary Senior Debt Securities of any series if the Holder or beneficial owner fails to make any necessary claim or to comply with any certification, identification or other requirements concerning the nationality, residence, identity or connection with the taxing jurisdiction of such Holder or beneficial owner, if such claim or compliance is required by statute, treaty, regulation or administrative practice of Spain as a condition to relief or exemption from such taxes; or

(iv) presented for payment (where presentation is required) more than 30 days after the Relevant Date, except to the extent that the relevant Holder would have been entitled to such Additional Amounts on presenting the same for payment on the expiry of such period of 30 days; or

(v) in relation to any estate, inheritance, gift, sales, transfer or similar taxes; or

(vi) to, or to a third party on behalf of, individuals resident for tax purposes in the Kingdom of Spain; or

(vii) to, or to a third party on behalf of, a Spanish-resident legal entity subject to Spanish corporation tax if the Spanish tax authorities determine that the Ordinary Senior Debt Securities of such series do not comply with exemption



200FX&=eNBBWLPLp

requirements specified in the Reply to a Consultation of the Directorate General for Taxation (*Dirección General de Tributos*) dated 27 July 2004 and require a withholding to be made; or

(viii) where the withholding or deduction is required pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to Sections 1471 through 1474 of the Code (“FATCA”), any regulations or agreements thereunder, any official interpretations thereof, any intergovernmental agreements with respect thereto (including the intergovernmental agreement between the United States and Spain on the implementation of FATCA), or any law implementing an intergovernmental agreement or any regulations or official interpretations relating thereto; or

(ix) in the case of any combination of items listed in (i) through (viii) above.

Additional Amounts will also not be paid with respect to any payment to a Holder who is a fiduciary, a partnership, a limited liability company or person other than the sole beneficial owner of that payment, to the extent that payment would be required by the laws of Spain (or any political subdivision thereof) to be included in the income, for tax purposes, of a beneficiary or settlor with respect to the fiduciary, a member of that partnership, an interest holder in that limited liability company or a beneficial owner who would not have been entitled to the Additional Amounts had it been the Holder.

For the purposes of (iv) above, the “Relevant Date” means, in respect of any payment, the date on which such payment first becomes due and payable, but if the full amount of the moneys payable has not been received by the Trustee on or prior to such due date, it means the first date on which, the full amount of such moneys having been so received and being available for payment to Holders of Ordinary Senior Debt Securities, notice to that effect shall have been duly given to the Holders of the relevant series of Ordinary Senior Debt Securities in accordance with Section 1.06.

Unless the context otherwise requires, any reference in this Section 10.04 to “principal” shall include any premium payable, or Redemption Amount and any other amounts in the nature of principal payable pursuant to this Ordinary Senior Debt Securities Indenture and “interest” shall include all amounts payable pursuant to Section 3.07 and any other amounts in the nature of interest payable under this Ordinary Senior Debt Securities Indenture.

As used in this Section 10.04, the term “Redemption Amount” means, as appropriate, the Maturity Redemption Amount, Early Redemption Amount (Tax), Early Redemption Amount (Call), Early Redemption Amount (Put) and Early Termination Amount or such other amount in the nature of a redemption amount as may be specified in, or determined in accordance with the provisions of, Section 3.01.



Unless the context requires otherwise, any references in this Ordinary Senior Debt Securities Indenture to payment of principal of or interest on a Senior Debt Security shall be deemed to include any Additional Amounts payable with respect thereto.

In the event that any withholding or deduction for or on account of any taxes is required, at least 10 days prior to each date of payment of principal of or interest on the relevant series of Ordinary Senior Debt Securities, or, if later, promptly after the obligation to withhold or deduct becomes known to the Company, the Company will furnish to the Trustee and the Paying Agent, if other than the Trustee, an Officer's Certificate specifying the amount required to be withheld or deducted on such payments to such Holders, certifying that the Company shall pay such amounts required to be withheld to the appropriate taxing jurisdiction and certifying to the fact that the Additional Amounts will be payable and the amounts so payable to each Holder, and that the Company will pay to the Trustee or the Paying Agent the Additional Amounts required to be paid; provided that no such Officer's Certificate will be required prior to any date of payment of principal of or interest on such Ordinary Senior Debt Securities if there has been no change with respect to the matters set forth in a prior Officer's Certificate. The Trustee and Paying Agent may rely on the fact that any Officer's Certificate contemplated by this paragraph has not been furnished as evidence of the fact that no withholding or deduction for or on account of any taxes is required. The Company covenants to indemnify the Trustee and Paying Agent for and to hold them harmless against any loss, liability or expense reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any such Officer's Certificate furnished pursuant to this paragraph or on the fact that any Officer's Certificate contemplated by this paragraph has not been furnished.

Section 10.05. *Corporate Existence.* Subject to Article 8, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its respective corporate existence, *provided, however,* that the foregoing shall not obligate the Company to preserve any such right or franchise if the Company shall determine that the preservation thereof is no longer desirable in the conduct of its business and that the loss thereof is not disadvantageous in any material respect to any Holder.

Section 10.06. *Statement as to Compliance.* The Company will deliver to the Trustee, within 120 days after the end of each fiscal year, a certificate in compliance with Section 314(a)(4) of the Trust Indenture Act.

Section 10.07. *Original Issue Document.* The Company shall provide to the Trustee on a timely basis such information, if any, as the Trustee requires to enable the Trustee to prepare and file any form required to be submitted by the Company with the Internal Revenue Service and the Holders of the Ordinary Senior Debt Securities relating to any original issue discount, including, without limitation, Form 8281, Form 1099-OID or any successor forms.



ARTICLE 11  
REDEMPTION OF ORDINARY SENIOR DEBT SECURITIES

Section 11.01. *Applicability of Article.* Ordinary Senior Debt Securities of any series shall be redeemable in accordance with their terms and (except as otherwise specified pursuant to Section 3.01 for Ordinary Senior Debt Securities of any series) in accordance with this Article 11.

Section 11.02. *Election to Redeem; Notice to Trustee.* The election of the Company to redeem any Ordinary Senior Debt Securities shall be evidenced by a Board Resolution. Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Ordinary Senior Debt Securities, the Company shall, at least 30 days prior, but not more than 60 days prior, to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date, of the principal amount of Ordinary Senior Debt Securities of such series to be redeemed and, if applicable, the tenor of the Ordinary Senior Debt Securities to be redeemed. In the case of any redemption of Ordinary Senior Debt Securities of any series prior to the expiration of any provision restricting such redemption provided in the terms of such Ordinary Senior Debt Securities or elsewhere in this Ordinary Senior Debt Securities Indenture, the Company shall furnish the Trustee with respect to such Ordinary Senior Debt Securities with an Officer's Certificate evidencing compliance with or waiver of such provision.

Section 11.03. *Selection by Trustee of Ordinary Senior Debt Securities to be Redeemed.* Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Ordinary Senior Debt Securities, if less than all the Ordinary Senior Debt Securities of any series are to be redeemed, the particular Ordinary Senior Debt Securities to be redeemed shall be selected not more than 60 days nor less than 30 days prior to the Redemption Date by the Trustee, from the Outstanding Ordinary Senior Debt Securities of such series not previously called for redemption, pro rata, by lot or by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Ordinary Senior Debt Securities of that series or any multiple thereof) of the principal amount of Ordinary Senior Debt Securities of such series of a denomination larger than the minimum authorized denomination for Ordinary Senior Debt Securities of that series.

The Trustee shall promptly notify the Company in writing of the Ordinary Senior Debt Securities selected for redemption and, in the case of any Ordinary Senior Debt Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Ordinary Senior Debt Securities Indenture, unless the context otherwise requires, all provisions relating to the redemption of Ordinary Senior Debt Securities shall relate in the case of any Ordinary Senior Debt Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Senior Debt Security which has been or is to be redeemed.



200FX&=eNBai8LR

Section 11.04. *Notice of Redemption.* Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Ordinary Senior Debt Securities, notice of redemption shall be given not less than 30 nor more than 60 days prior to the Redemption Date to each Holder of Ordinary Senior Debt Securities to be redeemed in the manner and to the extent provided in Section 1.06.

All notices of redemption shall state:

- (a) the series of Ordinary Senior Debt Securities subject to redemption,
- (b) the Redemption Date,
- (c) the Redemption Price,
- (d) if less than all the Outstanding Ordinary Senior Debt Securities of any series are to be redeemed, the principal amount of the Ordinary Senior Debt Securities to be redeemed,
- (e) that on the Redemption Date the Redemption Price together with any accrued but unpaid interest will become due and payable upon each such Senior Debt Security to be redeemed and, if applicable, that interest thereon will cease to accrue on or after the said date,
- (f) the place or places where such Ordinary Senior Debt Securities are to be surrendered for payment of the Redemption Price, and
- (g) the CUSIP, Common Code and/or ISIN number or numbers, if any, with respect to such Ordinary Senior Debt Securities.

Any such notice provided pursuant to this Section 11.04 shall be irrevocable, and the delivery thereof shall oblige the Company to make the redemption therein specified (unless the Bail-in Power is exercised by the Relevant Resolution Authority before the occurrence of such redemption).

Notice of redemption of Ordinary Senior Debt Securities to be redeemed at the selection of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company, and the Company shall deliver an Officer's Certificate requesting that the Trustee give such and setting forth the information to be stated in such notice no less than 10 Business Days prior to the date of the notice to Holders of Ordinary Senior Debt Securities (unless a shorter notice shall be satisfactory to the Trustee).

Section 11.05. *Deposit of Redemption Price.* On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as Paying Agent, segregate and hold in trust as provided in Section 10.03) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued but unpaid interest on, all the Ordinary Senior Debt Securities which are to be redeemed on that date.



Section 11.06. *Ordinary Senior Debt Securities Payable on Redemption Date.* Notice of redemption having been given as aforesaid, the Ordinary Senior Debt Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest, if any) such Ordinary Senior Debt Securities shall cease to accrue interest. Upon surrender of any such Senior Debt Security for redemption in accordance with said notice, such Senior Debt Security shall be paid by the Company at the Redemption Price, together with accrued but unpaid interest to the Redemption Date; *provided, however*, that with respect to any Ordinary Senior Debt Securities, unless otherwise specified as contemplated by Section 3.01, a payment of interest which is payable on an Interest Payment Date which is the Redemption Date, shall be payable to the Holders of such Ordinary Senior Debt Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Regular Record Date or Special Record Date according to the terms of the Ordinary Senior Debt Securities and the provisions of Section 3.07. Ordinary Senior Debt Securities in definitive form shall be presented for redemption to the Paying Agent.

If any Senior Debt Security called for redemption shall not be so paid upon surrender thereof for redemption, the Senior Debt Security shall, until paid, continue to accrue interest from and after the Redemption Date in accordance with its terms and the provisions of Section 3.07.

Section 11.07. *Ordinary Senior Debt Securities Redeemed in Part.* Any Senior Debt Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Senior Debt Security without service charge, a new Senior Debt Security or Ordinary Senior Debt Securities of the same series of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Senior Debt Security so surrendered. If a Global Security is surrendered, the new Senior Debt Security will also be a Global Security.

Section 11.08. *Optional Redemption for Taxation Reasons.* Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Ordinary Senior Debt Securities, if, in relation to the Ordinary Senior Debt Securities of any series, (i) as a result of any change in the laws or regulations of Spain or of any political subdivision thereof or any authority or agency therein or thereof having power to tax or in the interpretation or administration of any such laws or regulations which becomes effective on or after the date of issue of the first issued Ordinary Senior Debt Securities of such series or any earlier date specified pursuant to Section 3.01 the Company shall determine that (a) the Company would be required to pay Additional Amounts pursuant to Section 10.04 or (b) the Company would not be entitled to claim a deduction in computing tax liabilities in Spain in respect of any interest to be paid on the next interest payment date





on such series of Ordinary Senior Debt Securities or the value of such deduction to the Company would be materially reduced or (c) the applicable tax treatment of the Ordinary Senior Debt Securities of such series changes in a material way that was not reasonably foreseeable at the issue date and (ii) such circumstances are evidenced by the delivery by the Company to the Trustee of a certificate signed by two directors of the Company stating that such circumstances prevail and describing the facts leading thereto, an opinion of independent legal advisers of recognized standing to the effect that such circumstances prevail the Company may, at its option and having given no less than 30 nor more than 60 days' notice (ending, in the case of Ordinary Senior Debt Securities which bear interest at a floating rate, on a day upon which interest is payable) to the holders of the Ordinary Senior Debt Securities of such series in accordance with Section 11.04 (which notice shall be irrevocable), redeem in whole, but not in part, the outstanding Ordinary Senior Debt Securities of such series at their early tax redemption amount (the "Early Redemption Amount (Tax)") (which shall be their principal amount or at such other Early Redemption Amount (Tax) as may be specified in or determined in accordance with Section 3.01), together with any accrued interest thereon to (but excluding) the date fixed for redemption; provided, however, that in the case of (a) above, no such notice of redemption may be given earlier than 90 days (or, in the case of Ordinary Senior Debt Securities which bear interest at a floating rate a number of days which is equal to the aggregate of the number of days falling within the then current interest period applicable to the Ordinary Senior Debt Securities of such series plus 60 days) prior to the earliest date on which the Company would be obliged to pay such Additional Amounts were a payment in respect of the Ordinary Senior Debt Securities of such series then due.

Section 11.09. *Repurchase of Ordinary Senior Debt Securities.* Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Ordinary Senior Debt Securities, the Company and any of its subsidiaries or any third party designated by any of them, may at any time repurchase Ordinary Senior Debt Securities of any series in the open market or otherwise and at any price.

Section 11.10. *Optional Early Redemption (Call).* Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Ordinary Senior Debt Securities, the Company may, at the date or dates specified as contemplated by Section 3.01 with respect to such series, upon the expiration of the appropriate notice pursuant to Section 11.04 redeem all (but not, some only, except as otherwise specified pursuant to Section 3.01) of the Ordinary Senior Debt Securities of any series at their call early redemption amount (the "Early Redemption Amount (Call)") (which shall be their principal amount or such other Early Redemption Amount (Call) as may otherwise specified in or determined pursuant to Section 3.01), together with any accrued interest thereon to (but excluding) the date fixed for redemption.

If the Ordinary Senior Debt Securities of any series are to be redeemed in part only on any date in accordance with this Section 11.10, the Ordinary Senior Debt Securities of such series shall be redeemed (so far as may be practicable) pro rata to their principal amounts, or by lot or such other method as the Trustee deems fair and appropriate, subject always as aforesaid and provided always that the amount redeemed



in respect of the Ordinary Senior Debt Securities of such series shall be equal to the minimum authorized denomination thereof or an integral multiple thereof, subject always to compliance with all applicable laws and the requirements of any clearing system on which the Ordinary Senior Debt Securities of any such series may be cleared and of any listing authority, stock exchange and/or quotation system on which the Ordinary Senior Debt Securities of such series may be listed and/or quoted.

Section 11.11. *Optional Early Redemption (Put)*. Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Ordinary Senior Debt Securities, the Company shall, upon the exercise of the relevant option by a holder of Ordinary Senior Debt Securities of any series, redeem the Ordinary Senior Debt Securities of such series as may be specified pursuant to Section 3.01 at the put early redemption amount (the “Early Redemption Amount (Put)”) (which shall be the principal amount or such other Early Redemption Amount (Put) as may be specified in or determined pursuant to Section 3.01), together with accrued interest (if any) thereon. In order to exercise such option, the holder of the Ordinary Senior Debt Securities of such series must, not less than sixty days before the date so specified (or such other period as may be specified pursuant to Section 3.01), deposit a duly completed redemption notice in the form which is available from the specified office of the trustee specifying the aggregate principal amount in respect of which such option is exercised (which must be the minimum denomination specified in the relevant prospectus supplement or an integral multiple thereof). Such notice must also be delivered in accordance with the requirements of the applicable clearing system. No option exercised may be withdrawn (except as provided in the relevant indenture).

A holder of any series of Ordinary Senior Debt Securities may not exercise its optional early redemption (put) pursuant to this Section 11.11 in respect of any series of Ordinary Senior Debt Securities which is the subject of an exercise by the Company of its option to redeem such series of Ordinary Senior Debt Securities pursuant to Section 11.08 or Section 11.10.

## ARTICLE 12 BAIL-IN AND RESOLUTION ACTIONS

Section 12.01. *Agreement and Acknowledgement with Respect to the Exercise of the Bail-in Power*. (a) Notwithstanding any other term of the Ordinary Senior Debt Securities of any series or any other agreements, arrangements, or understandings between the Company and any Holder of the Ordinary Senior Debt Securities of any series, by its acquisition of the Ordinary Senior Debt Securities of any series, each Holder (which, for the purposes of this clause, includes each holder of a beneficial interest in the Ordinary Senior Debt Securities of any series) acknowledges, accepts, consents to and agrees to be bound by the exercise of any Bail-in Power (as defined herein) by the Relevant Resolution Authority that may result in the write-down or cancellation of all or a portion of the Amounts Due on the Ordinary Senior Debt Securities and/or the conversion of all or a portion of the Amounts Due on the Ordinary Senior Debt Securities into shares or other securities or other obligations of the Company or another person, including by means of a variation to the terms of the Ordinary Senior Debt securities to



give effect to the exercise by the Relevant Resolution Authority of such Bail-in Power. Each Holder of the Ordinary Senior Debt Securities of any series further acknowledges and agrees that the rights of the Holders of the Ordinary Senior Debt Securities of any series are subject to—and will be varied, if necessary, so as to give effect to—the exercise of any Bail-in Power by the Relevant Resolution Authority.

(b) Upon the Company being informed or notified by the Relevant Resolution Authority of the actual exercise of the date from which the Bail-in Power is effective with respect to the Ordinary Senior Debt Securities of such series, the Company will provide a written notice to the holders of the Ordinary Senior Debt Securities of such series through DTC without delay regarding such exercise of Bail-in Power. The Company will also deliver a copy of such notice to the Trustee for information purposes. Any delay or failure by the Company to give notice shall not affect the validity and enforceability of the Bail-in Power nor the effects on the Ordinary Senior Debt Securities described in this clause.

(c) No repayment or payment of principal of, premium, if any, together with any accrued but unpaid interest and additional Amounts Due, if any, on the Ordinary Senior Securities of any series, will become due and payable or be paid after the exercise of any Bail-in Power by the Relevant Resolution Authority if and to the extent such amounts have been reduced, converted, cancelled, amended or altered as a result of such exercise.

(d) By its acquisition of the Ordinary Senior Debt Securities of any series, each Holder of the Ordinary Senior Debt Securities of such series, (which, for the purposes of this clause, includes each holder of a beneficial interest in the Ordinary Senior Debt Securities of such series), to the extent permitted by the Trust Indenture Act, will waive any and all claims, in law and/or in equity, against the Trustee for, agree not to initiate a suit against the Trustee in respect of, and agree that the Trustee will not be liable for, any action that the Trustee takes, or abstains from taking, in either case in accordance with the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Ordinary Senior Debt Securities of such series.

(e) Additionally, by its acquisition of the Ordinary Senior Debt Securities of any series, each Holder of the Ordinary Senior Debt Securities of such series acknowledges and agrees that, upon the exercise of the Bail-in Power by the Relevant Resolution Authority:

(i) the Trustee will not be required to take any further directions from the Holders of the Ordinary Senior Debt Securities of such series with respect to any portion of the Ordinary Senior Debt Securities of such series that are written-down, converted to equity and/or cancelled under this Ordinary Senior Debt Securities Indenture, which authorizes holders of a majority in aggregate outstanding principal amount of the outstanding Ordinary Senior Debt Securities of such series to direct certain actions relating to the Ordinary Senior Debt Securities of such series; and

(ii) this Ordinary Senior Debt Securities Indenture will not impose any duties upon the Trustee whatsoever with respect to the exercise of the Bail-in Power by the Relevant Resolution Authority;



provided, however, that notwithstanding the exercise of the Bail-in Power by the Relevant Resolution Authority, so long as the Ordinary Senior Securities of any series remain outstanding, there will at all times be a Trustee for the Ordinary Senior Debt Securities of such series in accordance with this Ordinary Senior Debt Securities Indenture, and the resignation and/or removal of the Trustee and the appointment of a successor Trustee will continue to be governed by this Ordinary Senior Debt Securities Indenture, including to the extent no additional supplemental indenture or amendment is agreed upon in the event the Ordinary Senior Debt Securities of such series remain outstanding following the completion of the exercise of the Bail-in Power.

(f) By its acquisition of the Ordinary Senior Debt Securities of any series, each Holder of the Ordinary Senior Debt Securities of such series acknowledges and agrees that neither a cancellation or deemed cancellation of the principal or interest (in each case, in whole or in part), nor the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Ordinary Senior Debt Securities of such series will give rise to a default for purposes of Section 315(b) (Notice of Default) and Section 315(c) (Duties of the Trustee in Case of Default) of the Trust Indenture Act.

(g) By purchasing the Ordinary Senior Debt Securities of any series, each Holder (including each beneficial owner) of the Ordinary Senior Debt Securities of such series shall be deemed to have authorized, directed and requested DTC and any direct participant in DTC or other intermediary through which it holds the Ordinary Senior Debt Securities of such series to take any and all necessary action, if required, to implement the exercise of the Bail-in Power with respect to the Ordinary Senior Debt Securities of such series as it may be imposed, without any further action or direction on the part of such Holder.

(h) Each Holder of the Ordinary Senior Debt Securities of any series also acknowledges and agrees that the foregoing description of the Bail-in Power and its exercise is exhaustive on the matters described herein to the exclusion of any other agreements, arrangements or understandings relating to the application of any Bail-in Power to the Ordinary Senior Debt Securities of any series.

(i) Each Holder of the Ordinary Senior Debt Securities of any series that acquires such Ordinary Senior Debt Securities in the secondary market (including each beneficial owner) shall be deemed to acknowledge, agree to be bound by and consent to the same provisions specified herein to the same extent as the Holders of the Ordinary Senior Debt Securities that acquire the Ordinary Senior Debt Securities upon their initial issuance, including, without limitation, with respect to the acknowledgment and agreement to be bound by and consent to the terms of the Ordinary Senior Debt Securities, including in relation to the Bail-in-Power.



This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Ordinary Senior Debt Securities Indenture and of signature pages by facsimile or electronic format (i.e., "pdf" or "tif") transmission shall constitute effective execution and delivery of this Ordinary Senior Debt Securities Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes.



200FX&=&eN44VDeLS

**BANCO SANTANDER, S.A**  
**FORM F-3**

Donnelley Financial

ADGP64RS15  
12.1.14

ADG pf\_rend

01-Apr-2017 02:48 EST

**353001 EX4\_1 87** 4\*

NYC

HTM ESS 0C

Page 1 of 1

IN WITNESS WHEREOF, the parties hereto have caused this Ordinary Senior Debt Securities Indenture to be duly executed, all as of the day and year first above written.

BANCO SANTANDER, S.A.

By: \_\_\_\_\_

Name:

Title:

THE BANK OF NEW YORK MELLON, LONDON  
BRANCH

By: \_\_\_\_\_

Name:

Title:



## APPENDIX 1: PROCEDURES FOR COMPLIANCE WITH SPANISH TAX LEGISLATION

### Information Procedures and Certification Obligations of the Trustee or Paying Agent in respect of payments under the Ordinary Senior Debt Securities

1. *Delivery of the Payment Information Certificate:* In connection with each payment of income under the Ordinary Senior Debt Securities, the Trustee or Paying Agent shall deliver to the Company by the close of business on the business day immediately preceding the day on which such payment is made a duly completed and executed Payment Information Certificate substantially in the form set forth in Exhibit I hereto (*Form of Payment Information Certificate*). Such form may be delivered initially by email, in pdf form, or by fax, provided that the original is delivered by the end of the following month.

If the Payment Information Certificate is delivered by the Trustee or Paying Agent in a timely manner to the Company, the relevant income payment will be made free and clear of Spanish withholding tax.

The Trustee or Paying Agent shall have no duty or responsibility to comply with Spanish tax laws arising out of this Ordinary Senior Debt Securities Indenture, and may request and rely conclusively upon any instructions from the Company in respect of any action necessary or required to be taken by the Trustee or Paying Agent pursuant to this Appendix 1; *provided, however, that* in no event shall the Trustee or Paying Agent be required to expend or risk its own funds in the performance of any of its duties pursuant to this Appendix 1, or be obligated to take any legal or other action which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with acceptable indemnification.

The Company agrees to instruct the Trustee or Paying Agent in writing with respect to any certifications that may be required under Spanish law, and the Trustee or Paying Agent acknowledges that this Appendix 1 shall constitute an instruction in this regard, unless otherwise instructed in writing by the Company.

2. *Failure to deliver the Payment Information Certificate:* In the event that the Trustee or Paying Agent fails or for any reason is unable to deliver a timely, duly completed Payment Information Certificate as described above to the Company in respect of a payment of income under the Ordinary Senior Debt Securities, the Trustee or Paying Agent shall withhold Spanish income tax on behalf of the Company from the relevant payment at the then-applicable rate (currently set at 19).
3. If, after the relevant payment date but before the 10th day of the month immediately following the relevant payment date the Trustee or Paying Agent provides the duly completed Payment Information Certificate to the Company, then the Company shall instruct the Trustee or Paying Agent to immediately transfer the amounts withheld in respect of the relevant payment pursuant to



paragraph 1 above by way of reimbursement of the amounts withheld on the relevant payment date and completion of the corresponding income payment in respect of payments under the Ordinary Senior Debt Securities.

4. If the Trustee or Paying Agent fails or for any reason is unable to submit a duly completed and executed Payment Information Certificate to the Company by the 10th day of the month immediately following the relevant payment date, the Trustee or Paying Agent shall immediately return (but in any event no later than the 10th day of the month immediately following the relevant payment date) to the Company any remaining amount of the 19% tax withheld in respect of the relevant payment, and investors will have to apply directly to the Spanish tax authorities for any refund to which they may be entitled.





EXHIBIT I

**Anexo al Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos, aprobado por Real Decreto 1065/2007**

**Modelo de declaración a que se refieren los apartados 3, 4 y 5 del artículo 44 del Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos**

Annex to Royal Decree 1065/2007, of 27 July, approving the General Regulations of the tax inspection and management procedures and developing the common rules of the procedures to apply taxes

Declaration form referred to in paragraphs 3, 4 and 5 of Article 44 of the General Regulations of the tax inspection and management procedures and developing the common rules of the procedures to apply taxes

**Don (nombre), con número de identificación fiscal ( )<sup>(1)</sup>, en nombre y representación de (entidad declarante), con número de identificación fiscal ( )<sup>(1)</sup> y domicilio en ( ) en calidad de (marcar la letra que proceda):**

Mr. (name), with tax identification number ( )<sup>(1)</sup>, in the name and on behalf of (entity), with tax identification number ( )<sup>(1)</sup> and address in ( ) as (function - mark as applicable):

**(a) Entidad Gestora del Mercado de Deuda Pública en Anotaciones.**

(a) Management Entity of the Public Debt Market in book entry form.

**(b) Entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero.**

(b) Entity that manages the clearing and settlement system of securities resident in a foreign country.

**(c) Otras entidades que mantienen valores por cuenta de terceros en entidades de compensación y liquidación de valores domiciliadas en territorio español.**

(c) Other entities that hold securities on behalf of third parties within clearing and settlement systems domiciled in the Spanish territory.

**(d) Agente de pagos designado por el emisor.**

(d) Fiscal Agent appointed by the issuer.



200FX&=&eN5Piz&s.

**Formula la siguiente declaración, de acuerdo con lo que consta en sus propios registros:**

Makes the following statement, according to its own records:

**1. En relación con los apartados 3 y 4 del artículo 44:**

1. In relation to paragraphs 3 and 4 of Article 44:

**1.1 Identificación de los valores**

1.1 Identification of the securities

**1.2 Fecha de pago de los rendimientos (o de reembolso si son valores emitidos al descuento o segregados)**

1.2 Income payment date (or refund if the securities are issued at discount or are segregated)

**1.3 Importe total de los rendimientos (o importe total a reembolsar, en todo caso, si son valores emitidos al descuento o segregados)**

1.3 Total amount of income (or total amount to be refunded, in any case, if the securities are issued at discount or are segregated)

**1.4 Importe de los rendimientos correspondiente a contribuyentes del Impuesto sobre la Renta de las Personas Físicas, excepto cupones segregados y principales segregados en cuyo reembolso intervenga una Entidad Gestora**

1.4 Amount of income corresponding to Personal Income Tax taxpayers, except segregated coupons and segregated principals for which reimbursement an intermediary entity is involved

**1.5 Importe de los rendimientos que conforme al apartado 2 del artículo 44 debe abonarse por su importe íntegro (o importe total a reembolsar si son valores emitidos al descuento o segregados).**

1.5 Amount of income which according to paragraph 2 of Article 44 must be paid gross (or total amount to be refunded if the securities are issued at discount or are segregated).

**2. En relación con el apartado 5 del artículo 44.**

2. In relation to paragraph 5 of Article 44.

**2.1 Identificación de los valores**

2.1 Identification of the securities



**2.2 Fecha de pago de los rendimientos (o de reembolso si son valores emitidos al descuento o segregados)**

2.2 Income payment date (or refund if the securities are issued at discount or are segregated)

**2.3 Importe total de los rendimientos (o importe total a reembolsar si son valores emitidos al descuento o segregados)**

2.3 Total amount of income (or total amount to be refunded if the securities are issued at discount or are segregated)

**2.4 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero A.**

2.4 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country A.

**2.5 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero B.**

2.5 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country B.

**2.6 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero C.**

2.6 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country C.

**Lo que declaro en            a    de            de**

I declare the above in            on the            of            of

- (1) **En caso de personas, físicas o jurídicas, no residentes sin establecimiento permanente se hará constar el número o código de identificación que corresponda de conformidad con su país de residencia**
- (1) In case of non-residents (individuals or corporations) without permanent establishment in Spain it shall be included the number or identification code which corresponds according to their country of residence.



200FX&=eN2!a%sr

**Exhibit 4.2**

**BANCO SANTANDER, S.A.**

as Issuer

**TO**

**THE BANK OF NEW YORK MELLON,  
acting through its London Branch**

as Trustee

**INDENTURE**

**Second Ranking Senior Debt Securities**



200FX&=eN2m0HDLy

**BANCO SANTANDER, S.A.**

Reconciliation and tie between Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, and this Second Ranking Senior Debt Securities Indenture, dated as of [●], 2017.

	<u>Trust Indenture Act Section</u>	<u>Second Ranking Senior Debt Securities Indenture Section</u>
§310	(a)(1)	6.10
	(a)(2)	6.10
	(a)(3)	Not Applicable
	(a)(4)	Not Applicable
	(b)	6.09Section 6.10 6.11
§311	(a)	6.14
	(b)	6.14
§312	(a)	7.01, 7.02(a)
	(b)	7.02(b)
	(c)	7.02(c)
§313	(a)	7.03(a)
	(b)	7.03(a)
	(c)	1.06, 7.03(a)
	(d)	7.03(b)
§314	(a)	7.04, 10.06
	(b)	Not Applicable
	(c)(1)	1.02
	(c)(2)	1.02
	(c)(3)	Not Applicable
	(d)	Not Applicable
	(e)	1.02
	(f)	Not Applicable
§315	(a)	6.01
	(b)	6.03, 7.03(a)
	(c)	6.01
	(d)	6.01
	(d)(1)	6.01
	(d)(2)	6.01
	(d)(3)	6.01
	(e)	5.14
§316	(a)(1)(A)	5.12
	(a)(1)(B)	5.13
	(a)(2)	Not Applicable
	(a)(last sentence)	1.01
	(b)	5.08
§317	(a)(1)	5.03
	(a)(2)	5.04
	(b)	10.03
§318	(a)	1.08



200FX&=&eN2m3k!s

NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be a part of this Second Ranking Senior Debt Securities Indenture.



**TABLE OF CONTENTS**

	<u>PAGE</u>
<b>ARTICLE 1</b>	
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION	
<i>Section 1.01. Definitions</i>	1
<i>Section 1.02. Compliance Certificates and Opinions</i>	14
<i>Section 1.03. Form of Documents Delivered to Trustee</i>	15
<i>Section 1.04. Acts of Holders</i>	16
<i>Section 1.05. Notices, Etc. to Trustee or Company</i>	17
<i>Section 1.06. Notice to Holders; Waiver</i>	18
<i>Section 1.07. Language of Notices, Etc</i>	18
<i>Section 1.08. Conflict with Trust Indenture Act</i>	18
<i>Section 1.09. Effect of Headings and Table of Contents</i>	19
<i>Section 1.10. Successors and Assigns</i>	19
<i>Section 1.11. Separability Clause</i>	19
<i>Section 1.12. Benefits of Second Ranking Senior Debt Securities Indenture</i>	19
<i>Section 1.13. Governing Law</i>	19
<i>Section 1.14. Business Days and Legal Holidays</i>	19
<i>Section 1.15. Appointment of Agent for Service</i>	20
<i>Section 1.16. Calculation Agent</i>	21
<i>Section 1.17. Waiver of Jury Trial</i>	21
<i>Section 1.18. Judgment Currency</i>	21
<b>ARTICLE 2</b>	
SECOND RANKING SENIOR DEBT SECURITY FORMS	
<i>Section 2.01. Forms Generally</i>	21
<i>Section 2.02. Form of Trustee's Certificate of Authentication</i>	22
<b>ARTICLE 3</b>	
THE SECOND RANKING SENIOR DEBT SECURITIES	
<i>Section 3.01. Amount Unlimited, Issuable in Series</i>	23
<i>Section 3.02. Denominations</i>	25
<i>Section 3.03. Execution, Authentication, Delivery and Dating</i>	26
<i>Section 3.04. Temporary Second Ranking Senior Debt Securities</i>	27
<i>Section 3.05. Registration, Registration of Transfer and Exchange</i>	28
<i>Section 3.06. Mutilated, Destroyed, Lost and Stolen Second Ranking Senior Debt Securities</i>	32
<i>Section 3.07. Payment; Interest Rights and Rights to Additional Amounts Preserved</i>	32
<i>Section 3.08. Persons Deemed Owners</i>	34
<i>Section 3.09. Cancellation</i>	35
<i>Section 3.10. Computation of Interest</i>	36
<i>Section 3.11. CUSIP Numbers</i>	36
<i>Section 3.12. Additional Second Ranking Senior Debt Securities</i>	36



*Section 3.13. Correction of Minor Defects in or Amendment of Second Ranking Senior Debt Securities* 36  
*Section 3.14. Payments Subject to Fiscal Laws* 37

ARTICLE 4  
SATISFACTION AND DISCHARGE

*Section 4.01. Satisfaction and Discharge of Second Ranking Senior Debt Securities Indenture* 37  
*Section 4.02. Defeasance and Covenant Defeasance* 39  
*Section 4.03. Application of Trust Money* 43  
*Section 4.04. Repayment to Company* 43  
*Section 4.05. Reinstatement* 43

ARTICLE 5  
REMEDIES

*Section 5.01. Events of Default* 43  
*Section 5.02. Enforcement of Remedies* 44  
*Section 5.03. Collection of Indebtedness and Suits for Enforcement by the Trustee* 45  
*Section 5.04. Trustee May File Proofs of Claim* 46  
*Section 5.05. Trustee May Enforce Claims Without Possession of Second Ranking Senior Debt Securities* 47  
*Section 5.06. Application of Money Collected* 47  
*Section 5.07. Limitation on Suits* 47  
*Section 5.08. Unconditional Right of Holders to Receive Principal, Premium and Interest, if any, and Additional Amounts* 48  
*Section 5.09. Restoration of Rights and Remedies* 48  
*Section 5.10. Rights and Remedies Cumulative* 49  
*Section 5.11. Delay or Omission Not Waiver* 49  
*Section 5.12. Control by Holders* 49  
*Section 5.13. Waiver of Past Defaults* 50  
*Section 5.14. Undertaking for Costs* 50

ARTICLE 6  
THE TRUSTEE

*Section 6.01. Certain Duties and Responsibilities* 51  
*Section 6.02. Spanish Tax Procedures and Obligations of the Trustee* 52  
*Section 6.03. Notice of Defaults* 52  
*Section 6.04. Certain Rights of Trustee* 52  
*Section 6.05. Not Responsible for Recitals or Issuance of Second Ranking Senior Debt Securities* 55  
*Section 6.06. May Hold Second Ranking Senior Debt Securities* 55  
*Section 6.07. Money Held in Trust* 55  
*Section 6.08. Compensation and Reimbursement* 55  
*Section 6.09. Disqualification; Conflicting Interests* 57





<i>Section 6.10.</i>	<i>Corporate Trustee Required; Eligibility</i>	57
<i>Section 6.11.</i>	<i>Resignation and Removal; Appointment of Successor</i>	57
<i>Section 6.12.</i>	<i>Acceptance of Appointment by Successor</i>	59
<i>Section 6.13.</i>	<i>Merger, Conversion, Consolidation or Succession to Business</i>	60
<i>Section 6.14.</i>	<i>Preferential Collection of Claims</i>	60
<i>Section 6.15.</i>	<i>Appointment of Authenticating Agent</i>	61
<i>Section 6.16.</i>	<i>Appointment of Additional Trustees</i>	62
<i>Section 6.17.</i>	<i>Tax Withholding</i>	62

**ARTICLE 7**

**HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY**

<i>Section 7.01.</i>	<i>The Company to Furnish Trustee Names and Addresses of Holders</i>	64
<i>Section 7.02.</i>	<i>Preservation of Information; Communication to Holders</i>	64
<i>Section 7.03.</i>	<i>Reports by Trustee</i>	65
<i>Section 7.04.</i>	<i>Reports by the Company</i>	65

**ARTICLE 8**

**CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER**

<i>Section 8.01.</i>	<i>Company May Consolidate, Etc., Only on Certain Terms</i>	66
<i>Section 8.02.</i>	<i>Successor Corporation Substituted</i>	66
<i>Section 8.03.</i>	<i>Assumption of Obligations</i>	67
<i>Section 8.04.</i>	<i>Substitution and Variation</i>	68

**ARTICLE 9**

**SUPPLEMENTAL INDENTURES**

<i>Section 9.01.</i>	<i>Supplemental Indentures without Consent of Holders</i>	69
<i>Section 9.02.</i>	<i>Supplemental Indentures with Consent of Holders</i>	70
<i>Section 9.03.</i>	<i>Execution of Supplemental Indentures</i>	71
<i>Section 9.04.</i>	<i>Effect of Supplemental Indentures</i>	72
<i>Section 9.05.</i>	<i>Conformity with Trust Indenture Act</i>	72
<i>Section 9.06.</i>	<i>Reference in Second Ranking Senior Debt Securities to Supplemental Indentures</i>	72

**ARTICLE 10**

**COVENANTS**

<i>Section 10.01.</i>	<i>Payment of Principal, Premium, and Interest</i>	72
<i>Section 10.02.</i>	<i>Maintenance of Office or Agency</i>	72
<i>Section 10.03.</i>	<i>Money for Payments to be Held in Trust</i>	73
<i>Section 10.04.</i>	<i>Additional Amounts</i>	74
<i>Section 10.05.</i>	<i>Corporate Existence</i>	77
<i>Section 10.06.</i>	<i>Statement as to Compliance</i>	77
<i>Section 10.07.</i>	<i>Original Issue Document</i>	77



**ARTICLE 11**

**REDEMPTION OF SECOND RANKING SENIOR DEBT SECURITIES**

<i>Section 11.01. Applicability of Article</i>	78
<i>Section 11.02. Election to Redeem; Notice to Trustee</i>	78
<i>Section 11.03. Selection by Trustee of Second Ranking Senior Debt Securities to Be Redeemed</i>	78
<i>Section 11.04. Notice of Redemption</i>	79
<i>Section 11.05. Deposit of Redemption Price</i>	80
<i>Section 11.06. Second Ranking Senior Debt Securities Payable on Redemption Date</i>	80
<i>Section 11.07. Second Ranking Senior Debt Securities Redeemed in Part</i>	80
<i>Section 11.08. Optional Redemption Due to Changes in Tax Treatment</i>	81
<i>Section 11.09. Optional Redemption For TLAC/MREL Disqualification Event</i>	81
<i>Section 11.10. Optional Early Redemption (Call)</i>	82
<i>Section 11.11. Repurchase of Second Ranking Senior Debt Securities</i>	83

**ARTICLE 12**

**RANKING OF SECOND RANKING SENIOR DEBT SECURITIES**

<i>Section 12.01. Ranking of Second Ranking Senior Debt Securities</i>	83
<i>Section 12.02. Intentionally Omitted</i>	84
<i>Section 12.03. Provisions Solely to Define Relative Rights</i>	84
<i>Section 12.04. Waiver of Right of Set-off</i>	85
<i>Section 12.05. Trustee to Effectuate Ranking</i>	85
<i>Section 12.06. Trustee Not Fiduciary for Creditors of Senior Higher Priority Liabilities</i>	85
<i>Section 12.07. Rights of Trustee as Creditor of Senior Higher Priority Liabilities; Preservation of Trustee's Rights</i>	86
<i>Section 12.08. Article Applicable to Paying Agents</i>	86

**ARTICLE 13**

**BAIL-IN AND RESOLUTION ACTIONS**

<i>Section 13.01. Agreement and Acknowledgement with Respect to the Exercise of the Bail-in Power</i>	86
---	----



SECOND RANKING SENIOR DEBT SECURITIES INDENTURE, dated as of [●], 2017, between BANCO SANTANDER, S.A., a *sociedad anónima* incorporated under the laws of the Kingdom of Spain (the “**Company**”), having its principal executive office located at Ciudad Grupo Santander, Avenida de Cantabria s/n, 28660 Boadilla del Monte, Madrid, Spain and THE BANK OF NEW YORK MELLON, acting through its London Branch, a banking corporation duly organized and existing under the laws of the State of New York as Trustee (the “**Trustee**”), having its Corporate Trust Office at One Canada Square, London, E14 5AL, United Kingdom.

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Second Ranking Senior Debt Securities Indenture to provide for the issuance from time to time of its second ranking senior debt securities (the “**Second Ranking Senior Debt Securities**”), to be issued in one or more series, represented by one or more Global Securities in registered form, or represented by definitive Second Ranking Senior Debt Securities in registered form, the amount and terms of each such series to be determined as hereinafter provided.

All things necessary to make this Second Ranking Senior Debt Securities Indenture a valid and binding agreement of the Company, in accordance with its terms, have been done.

This Second Ranking Senior Debt Securities Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder that are required to be part of this Second Ranking Senior Debt Securities Indenture and, to the extent applicable, shall be governed by such provisions.

NOW, THEREFORE, THIS SECOND RANKING SENIOR DEBT SECURITIES INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Second Ranking Senior Debt Securities by the Holders (as defined herein) thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of Second Ranking Senior Debt Securities of any series as follows:

ARTICLE 1  
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. *Definitions.* For all purposes of this Second Ranking Senior Debt Securities Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;



(2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles and, except as otherwise herein expressly provided, the term “generally accepted accounting principles” with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the Kingdom of Spain at the date of such computation and as applied by the Company;

(4) the words “**herein**,” “**hereof**” and “**hereunder**” and other words of similar import refer to this Second Ranking Senior Debt Securities Indenture as a whole and not to any particular Article, Section or other subdivision;

(5) any reference to an “**Article**” or a “**Section**” refers to an Article or Section of this Second Ranking Senior Debt Securities Indenture; and

(6) the word “or” is always used inclusively (for example, the phrase “A or B” means “A or B or both”, not “either A or B but not both”).

Certain terms used principally in certain Articles hereof are defined in those Articles.

“**Act**”, when used with respect to any Holder, has the meaning set forth in Section 1.04.

“**Additional Amounts**” has the meaning set forth in Section 10.04.

“**Additional Second Ranking Senior Debt Securities**” has the meaning set forth in Section 3.12.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “**control**” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing.

“**Agents**” means the agents appointed in accordance with this Second Ranking Senior Debt Securities Indenture or applicable supplemental indenture;

“**Agent Member**” means a member of, or participant in, any Depositary.

“**Amounts Due**” means the principal amount of, premium, if any, together with any accrued but unpaid interest, and Additional Amounts, if any, due on the Second Ranking Senior Debt Securities of any series. References to such amounts will include amounts that have become due and payable, but which have not been paid, prior to the exercise of the Bail-in Power by the Relevant Resolution Authority.



An “**Alignment Event**” is deemed to have occurred if, following the implementation of the Senior Ranking Amendment Legislation or an amendment thereof, the terms and conditions of Statutory Second Ranking Senior Liabilities or the most junior sub-class within the unsubordinated and unsecured liabilities class, are different in any respect from the terms and conditions of the Second Ranking Senior Debt Securities set forth herein. Further, with respect to each series of Second Ranking Senior Debt Securities, an Alignment Event will be deemed to have occurred if the Senior Ranking Amendment Legislation requires that only securities issued on or following a certain date which is after the issue date of the Second Ranking Senior Debt Securities of such series may qualify as Statutory Second Ranking Senior Liabilities or as the most junior sub-class within the unsubordinated and unsecured liabilities class.

“**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 Company and/or the Group including, without limitation to the generality of the foregoing, those regulations, requirements, guidelines and policies relating to capital adequacy, resolution and/or solvency then in effect of the Regulator (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 Company and/or the Group).

“**Applicable TLAC/MREL Regulations**” means, at any time, the laws, regulations, requirements, guidelines and policies then in effect in the Kingdom of Spain giving effect to the MREL and the principles set forth in the FSB TLAC Term Sheet or any successor principles then applicable to the Company and/or the Group, including, without limitation to the generality of the foregoing, CRD IV, the BRRD and those regulations, requirements, guidelines and policies giving effect to the MREL and the principles set forth in the FSB TLAC Term Sheet or any successor principles 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 Company and/or the Group).

“**Authenticating Agent**” means any Person authorized by the Trustee to act on behalf of the Trustee to authenticate Second Ranking Senior Debt Securities.

“**Authorized Newspaper**” means a newspaper, in an official language of the place of publication or in the English language, customarily published on each day that is a Business Day in the place of publication, whether or not published on days that are Legal Holidays in the place of publication, and of general circulation in each place in connection with which the term is used or in the financial community of each such place. Where successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different newspapers in the same city meeting the foregoing requirements and in each case on any day that is a Business Day in the place of publication.



200FX&=8eN2n15fLQ

“**Bail-in Power**” means any statutory write-down and/or conversion power existing from time to time under any laws, regulations, rules or requirements in effect in the Kingdom of Spain relating to the resolution of Regulated Entities applicable to the Company or other Regulated Entities of the group, including (but not limited to) (i) the transposition of the BRRD (including but not limited to, Law 11/2015, Royal Decree 1012/2015 and any other implementing regulations) as amended or superseded from time to time, (ii) Regulation (EU) No. 806/2014 of the European Parliament and of 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 superseded from time to time, the “**SRM Regulation**”) and (iii) the instruments, rules and standards created thereunder, pursuant to which any obligation of a Regulated Entity (or an affiliate of such Regulated Entity) can be reduced, cancelled and/or converted into shares or other securities or obligations of such Regulated Entity (or affiliate of such Regulated Entity) or any other person.

“**Board of Directors**” means either the board of directors of the Company or any committee or Person duly authorized to act generally or in any particular respect for the Company hereunder.

“**Board Resolution**” means a copy of a resolution certified by the Secretary or an Assistant Secretary or any Person duly authorized by the Company to have been duly adopted by the relevant Board of Directors or an authorized committee thereof and to be in full force and effect on the date of such certification and delivered to the Trustee.

“**BRRD**” means Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, as amended or superseded from time to time.

“**Business Day**” means, unless otherwise provided in the form of Second Ranking Senior Debt Securities for any particular series pursuant to the provisions of this Second Ranking Senior Debt Securities Indenture, any day, other than Saturday or Sunday, that is neither a Legal Holiday nor a day on which banking institutions are authorized or required by law, regulation or executive order to close in the City of New York, London, Madrid or any other place or places where the principal of, or any premium or interest on, or any Additional Amounts with respect to the Second Ranking Senior Debt Securities of that series are payable.

“**Calculation Agent**” means the Trustee or such other person authorized by the Company as the party responsible for calculating the rate(s) of interest and interest amount(s) and/or such other amount(s) from time to time in relation to any series of Second Ranking Senior Debt Securities.

“**Commission**” means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.



200FX&=&eN2n8mxLk

“**Company**” means the Person named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Second Ranking Senior Debt Securities Indenture, and thereafter “Company” shall mean such successor Person.

“**Company Request**” and “**Company Order**” mean, respectively, a written request or order, as the case may be, signed in the name of the Company by any member of the Board of Directors or any officer or representative of the Company empowered to do so by Board Resolution, and delivered to the Trustee.

“**Conversion Event**” means the cessation of use of (i) a Foreign Currency both by the government of the country which issued such currency and for the settlement of transactions by a central bank or other public institutions of or within the international banking community, or (ii) the euro both within the European monetary system and for the settlement of transactions by public institutions of or within the European Union.

“**Corporate Trust Office**” means the office of the Trustee at which its corporate trust business in London, England, is principally administered, which office as of the date hereof is located at One Canada Square, London E14 5AL (Attention: Corporate Trust Administration, facsimile: +44 20 7964 2536) or, if a different Trustee is appointed for a particular series of Second Ranking Senior Debt Securities, the address set forth in the supplemental indenture naming the Trustee for that particular series of Second Ranking Senior Debt Securities.

The term “**corporation**” includes corporations, associations, companies, partnerships and business trusts.

“**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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC or such other directive as may come into effect in place thereof.

“**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 Regulator, the European Banking Authority or any other relevant authority, which are applicable to Banco Santander (on a standalone basis) or the Group (on a consolidated basis).

“**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 and amending Regulation (EU) No. 648/2012 or such other regulation as may come into effect in place thereof.



“**Default Interest**” has the meaning set forth in Section 3.07.

“**Depository**” means, with respect to any series of Second Ranking Senior Debt Securities, a clearing agency that is designated to act as Depository for the Global Securities evidencing all or part of such Second Ranking Senior Debt Securities as contemplated by Section 3.05.

“**dollar**” or “**\$**” or any similar reference means the coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

“**DTC**” means The Depository Trust Company or its nominee or its or their successor.

“**Early Redemption Amount (Call)**” has the meaning set forth in Section 11.10.

“**Early Redemption Amount (TLAC/MREL Disqualification Event)**” has the meaning set forth in Section 11.09.

“**Early Redemption Amount (Tax)**” has the meaning set forth in Section 11.08.

“**Early Termination Amount**” means the amount immediately due and payable if any Event of Default set forth in paragraph (a) (ii) of Section 5.01 has occurred in relation to any series of Second Ranking Senior Debt Securities and the trustee or the holders of at least 25% in outstanding principal amount of the senior debt securities of that series has, at their discretion, declared that the Second Ranking Senior Debt Securities of such series and all interest then accrued thereon is due and payable forthwith.

“**EUR**”, “**euro**” or “**€**” means the currency of the member states of the European Union (“**EU**”) that, from time to time, have adopted the single currency in accordance with the treaty establishing the European Community, as amended from time to time.

“**Event of Default**” has the meaning specified in Section 5.01.

“**Exchange Act**” means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the Commission thereunder.

“**Foreign Currency**” means the euro or any currency issued by the government of any country (or a group of countries or participating member states) other than the United States which as at the time of payment is legal tender for the payment of public and private debts.

“**Foreign Government Securities**” means with respect to Second Ranking Senior Debt Securities of any series that are denominated in a Foreign Currency, non-callable (i) direct obligations of the participating member state or government that issued such Foreign Currency for the payment of which obligations its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or





instrumentality of such participating member state or government, the payment of which obligations is unconditionally guaranteed as a full faith and credit obligation of such participating member state or government. For the avoidance of doubt, for all purposes hereof, euro shall be deemed to have been issued by each participating member state from time to time.

“**FSB TLAC Term Sheet**” means the Total Loss-absorbing Capacity (TLAC) term sheet set forth in the document dated 9 November 2015 published by the Financial Stability Board, entitled “Principles on Loss-absorbing and Recapitalization Capacity of G-SIBs in Resolution,” as amended from time to time.

“**Global Security**” means one or more global certificates evidencing all or part of a series of Second Ranking Senior Debt Securities, authenticated and delivered to or on behalf of the Holder and registered in the name of the Holder or its nominee.

“**Group**” means Banco Santander, S.A. and its consolidated subsidiaries.

“**Holder**” means a Person in whose name a Second Ranking Senior Debt Security in global or definitive form is registered in the Second Ranking Senior Debt Security Register.

“**Independent Public Accountants**” means accountants or a firm of accountants that, with respect to the Company and any other obligor under the Second Ranking Senior Debt Securities, are independent public accountants within the meaning of the Securities Act of 1933, as amended, and the rules and regulations promulgated by the Commission thereunder, who may be the independent public accountants regularly retained by the Company or who may be other independent public accountants.

“**Interest Payment Date**”, when used with respect to any Second Ranking Senior Debt Security, means the Stated Maturity of any installment of interest on such Second Ranking Senior Debt Security.

“**Law 11/2015**” means Law 11/2015, of June 18, for the recovery and resolution of credit institutions and investment firms (*Ley 11/2015, de 18 de junio, de recuperacion y resolucion de entidades de credito y empresas de servicios de inversion*), as amended from time to time.

“**Legal Holiday**”, with respect to any Place of Payment or other location, means a Saturday, a Sunday or a day on which banking institutions in such Place of Payment or other location are not authorized or obligated to be open.

“**Losses**” means any and all claims, losses, liabilities, damages, costs, expenses and judgments (including legal fees and expenses) sustained by the Company or the Trustee.

“**Maturity**”, when used with respect to any Second Ranking Senior Debt Security, means the date, if any, on which the principal or any installment of principal of such Second Ranking Senior Debt Security becomes due and payable as therein or herein provided, whether by call for redemption, repurchase, declaration of acceleration or otherwise.



“**MREL**” means the “minimum requirement for own funds and eligible liabilities” for credit institutions under the BRRD, set in accordance with Article 45 of the BRRD (as transposed in Spain), Commission Delegated Regulation (EU) 2016/1450 of 23 May 2016, supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities, or any successor requirement under EU legislation and relevant implementing legislation and regulation in Spain.

“**Officer’s Certificate**” means a certificate signed by any member of the Board of Directors, the Secretary or the Deputy Secretary of the Board of Directors, a Vice President or any officer or any other Person duly authorized by the Company, that complies with the requirements of Section 314(e) of the Trust Indenture Act and is delivered to the Trustee.

“**Opinion of Counsel**” means a written opinion of legal advisors, who may be an employee of or legal advisors for the Company or other legal advisors who shall be reasonably acceptable to the Trustee and that, if required by the Trust Indenture Act, complies therewith.

“**Original Issue Discount Security**” means any Second Ranking Senior Debt Security which provides for an amount less than the principal amount, to be due and payable upon maturity thereof.

“**Outstanding**”, when used with respect to Second Ranking Senior Debt Securities or any series of Second Ranking Senior Debt Securities means (except as otherwise specified pursuant to Section 3.01), as of the date of determination, all Second Ranking Senior Debt Securities or all Second Ranking Senior Debt Securities of such series, as the case may be, theretofore authenticated and delivered under this Second Ranking Senior Debt Securities Indenture, except:

- (i) Second Ranking Senior Debt Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- (ii) Second Ranking Senior Debt Securities, or portions thereof, for whose payment or redemption money, U.S. Government Obligations or Foreign Government Securities in the necessary amount have been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Second Ranking Senior Debt Securities; provided, that, if such Second Ranking Senior Debt Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Second Ranking Senior Debt Securities Indenture or provision therefor satisfactory to the Trustee has been made;



(iii) any such Second Ranking Senior Debt Security with respect to which the Company has effected defeasance pursuant to the terms hereof, except to the extent provided in Section 4.02; and

(iv) Second Ranking Senior Debt Securities which have been paid pursuant to Section 11.06 or in exchange for or in lieu of which other Second Ranking Senior Debt Securities have been authenticated and delivered pursuant to this Second Ranking Senior Debt Securities Indenture, other than any such Second Ranking Senior Debt Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Second Ranking Senior Debt Securities are held by a bona fide purchaser in whose hands such Second Ranking Senior Debt Securities are valid obligations of the Company;

*provided, however,* that in determining whether the Holders of the requisite principal amount of the Outstanding Second Ranking Senior Debt Securities of any series have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (i) the principal amount of a Second Ranking Senior Debt Security denominated in a Foreign Currency shall be the Dollar equivalent, determined on the date of original issuance of such Second Ranking Senior Debt Security, of the principal amount of such Second Ranking Senior Debt Security; and (ii) Second Ranking Senior Debt Securities beneficially owned by the Company or any other obligor upon the Second Ranking Senior Debt Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Second Ranking Senior Debt Securities for which a Responsible Officer of the Trustee has received an Officer's Certificate stating that such Second Ranking Senior Debt Securities are so beneficially owned shall be so disregarded; provided, further, however, that Second Ranking Senior Debt Securities so beneficially owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Second Ranking Senior Debt Securities and that the pledgee is not the Company or any other obligor upon the Second Ranking Senior Debt Securities or any Affiliate of the Company or of such other obligor.

**"Paying Agent"** means any Person (which may include the Company) authorized by the Company to pay the principal of, or any premium or interest on, or any Additional Amounts with respect to, any Second Ranking Senior Debt Securities on behalf of the Company. Except as otherwise specified as contemplated by Section 3.01 hereof, The Bank of New York Mellon, acting through its London Branch will act as Principal Paying Agent in respect of the Second Ranking Senior Debt Securities of any series.

**"Payment Statement"** means the statement to be delivered to the Company by the Trustee, substantially in the form set forth in Exhibit I to Appendix I, pursuant to Section 6.02.

**"Person"** means any individual, company, corporation, firm, partnership, joint venture, association, organization, state or agency of a state or other entity, whether or not having separate legal personality.



“**Place of Payment**”, when used with respect to the Second Ranking Senior Debt Securities of any series, means the place or places where the principal of, or any premium or interest on, or any Additional Amounts with respect to the Second Ranking Senior Debt Securities of that series are payable as specified pursuant to Section 3.01 or, if not so specified, as specified in Section 10.02.

“**Predecessor Security**” of any particular Second Ranking Senior Debt Security means every previous Second Ranking Senior Debt Security evidencing all or a portion of the same debt as that evidenced by such particular Second Ranking Senior Debt Security; and, for the purposes of this definition, any Second Ranking Senior Debt Security authenticated and delivered under Section 3.06 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Second Ranking Senior Debt Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Second Ranking Senior Debt Security.

“**Qualifying Notes**” means, with respect to each series of Second Ranking Senior Debt Securities, at any time, any securities issued directly by the Company that have terms not otherwise materially less favorable to the holders of the Second Ranking Senior Debt Securities of such series than the terms of the Second Ranking Senior Debt Securities of such series, provided that the Company shall have delivered a certificate signed by two directors of the Company to that effect to the Trustee not less than five Business Days prior to (x) in the case of a substitution of the Second Ranking Debt Securities of any series pursuant to Section 8.04, the issue date of the relevant securities or (y) in the case of a variation of the Second Ranking Debt Securities of any series pursuant to Section 8.04, the date such variation becomes effective, provided that such securities shall:

- (i) if the TLAC/MREL Requirement Date has occurred, contain terms which comply with the then current requirements for TLAC/MREL-Eligible Instruments as embodied in the Applicable TLAC/MREL Regulations; and
- (ii) carry the same rate of interest as the Second Ranking Senior Debt Securities of such series prior to the relevant substitution or variation pursuant to Section 8.04; and
- (iii) have the same denomination and aggregate outstanding principal amount as the Second Ranking Senior Debt Securities of such series prior to the relevant substitution or variation pursuant to Section 8.04; and
- (iv) have the same date of maturity and the same dates for payment of interest as the Second Ranking Senior Debt Securities of such series prior to the relevant substitution or variation pursuant to Section 8.04; and
- (v) have at least the same ranking as the Second Ranking Senior Debt Securities of such series; and



(vi) not, immediately following such substitution or variation, be subject to a TLAC/MREL Disqualification Event, an Alignment Event and/or a tax event that would entitle the Company to redeem the debt securities as set forth under Section 11.08; and

(vii) be listed or admitted to trading on any stock exchange as selected by the Company, if the Second Ranking Senior Debt Securities of such series were listed or admitted to trading on a stock exchange immediately prior to the relevant substitution or variation pursuant to Section 8.04.

**“Redemption Date”**, when used with respect to any Second Ranking Senior Debt Security to be redeemed, means the date fixed for such redemption by or pursuant to this Second Ranking Senior Debt Securities Indenture.

**“Redemption Price”**, when used with respect to any Second Ranking Senior Debt Security to be redeemed, means the price at which it is to be redeemed pursuant to this Second Ranking Senior Debt Securities Indenture, which shall include the Early Redemption Amount (Tax), Early Redemption Amount (Call) or Early Redemption Amount (TLAC/MREL Disqualification Event), as applicable.

**“Regular Record Date”** for the interest payable on any Interest Payment Date on Second Ranking Senior Debt Securities of any series means the date specified for the purpose pursuant to Section 3.01.

**“Regulated Entity”** means any legal person to which BRRD, as implemented in the Kingdom of Spain (including but not limited to, Law 11/2015, Royal Decree 1012/2015 and any other implementing regulations) as amended or superseded from time to time), the SRM Regulation, or any other Spanish law relating to Bail-in Power, applies, which includes, certain credit entities, investment firms, and certain parent or holding companies.

**“Regulator”** means the European Central Bank or such other or successor authority exercising primary bank supervisory authority, in each case with respect to prudential matters in relation to the Group;

**“Relevant Resolution Authority”** means the Spanish Fund for the Orderly Restructuring of Banks or the European Single Resolution Mechanism, as the case may be, according to Law 11/2015, and any other entity with the authority to exercise the Bail-in Power or any other resolution power from time to time.

**“Responsible Officer”**, when used with respect to the Trustee, means any officer of the Trustee assigned to or working in the corporate trust department (or any successor unit) of the Trustee located at the Corporate Trust Office of the Trustee, who shall have direct responsibility for the administration of this Second Ranking Senior Debt Securities Indenture and, for the purposes of Section 6.01(c)(ii), shall also include any other officer of the Trustee to whom any corporate trust matter is referred because of such officer’s knowledge of and familiarity with the particular subject.



“**Senior Higher Priority Liabilities**” means the unsubordinated and unsecured obligations (*créditos ordinarios*) of the Company, other than those under the Second Ranking Senior Debt Securities and the Senior Parity Liabilities.

“**Senior Parity Liabilities**” means any other unsubordinated and unsecured obligations (*créditos ordinarios*) of the Company which, by law and/or by their terms, rank *pari passu* with the Company’s obligations under the Second Ranking Senior Debt Securities at that time.

“**Second Ranking Senior Debt Securities**”, has the meaning set forth in the recitals of the Company herein and more particularly means any series of Second Ranking Senior Debt Securities issued, authenticated and delivered under this Second Ranking Senior Debt Securities Indenture.

“**Second Ranking Senior Debt Securities Indenture**” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms and forms of particular series of Second Ranking Senior Debt Securities established pursuant to Section 3.01.

“**Second Ranking Senior Debt Security**” means one of the Second Ranking Senior Debt Securities.

“**Second Ranking Senior Debt Security Register**” and “**Second Ranking Senior Debt Security Registrar**” have the respective meanings specified in Section 3.05.

“**Senior Ranking Amendment Legislation**” means, if and as applicable, a Spanish law that expressly provides for the possibility that, upon the insolvency (*concurso*) of a Regulated Entity issuer of debt securities (i) the obligations under certain unsubordinated and unsecured liabilities (*créditos ordinarios*) (the “**Statutory Second Ranking Senior Liabilities**”) may rank below those of other unsubordinated and unsecured liabilities (*créditos ordinarios*) with higher priority ranking (the “**Statutory Ordinary Senior Liabilities**”) or (ii) different sub-classes within the unsubordinated and unsecured liabilities (*créditos ordinarios*) class are contractually agreed.

“**Spanish Insolvency Law**” means Law 22/2003 (*Ley Concursal*) of 9 July 2003 regulating insolvency proceedings in Spain, or an equivalent legal provision which replaces it in the future.

“**Special Record Date**”, when used for the payment of any Default Interest on Second Ranking Senior Debt Securities of any series, means the date specified by the Company for the purpose pursuant to Section 3.07.

“**SRM Regulation**” means Regulation (EU) No. 806/2014 of the European Parliament and of 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 superseded from time to time.



“**Stated Maturity**”, when used with respect to any Second Ranking Senior Debt Security or any installment of principal thereof or interest thereon, means the date or dates, if any, specified in, or determined in accordance with the terms of, such Second Ranking Senior Debt Security, including as the same may be modified pursuant to the Bail-in Power set forth in Article 13, as the fixed date or dates on which the principal of such Second Ranking Senior Debt Security or such installment of principal or interest (and Additional Amounts, if any) is due and payable.

“**Subsidiary**” means any entity over which the Company may have, directly or indirectly, control in accordance with Applicable Banking Regulations;

“**Supervisory Permission**” means, in relation to any action, such supervisory permission (or, as appropriate, waiver) from the Regulator and/or the Relevant Resolution Authority as is required therefor under Applicable Banking Regulations;

A “**TLAC/MREL Disqualification Event**” shall have occurred at any time, on or following the TLAC/MREL Requirement Date, that all or part of the outstanding nominal amount of a series of Second Ranking Senior Debt Securities does not fully qualify as TLAC/MREL-Eligible Instruments of the Company and/or the Group, except where such non-qualification (i) was reasonably foreseeable as at the issue date of such series or (ii) is due solely to the remaining maturity of the Second Ranking Senior Debt Securities of such series being less than any period prescribed for TLAC/MREL-Eligible Instruments by the Applicable TLAC/MREL Regulations or (iii) is as a result of the Second Ranking Senior Debt Securities of such series being bought back by or on behalf of the Company or a buy back of the Second Ranking Senior Debt Securities of such series which is funded by or on behalf of the Company.

For the purpose of paragraph (i) of this definition, the circumstances where any non-qualification of any series of Second Ranking Senior Debt Securities as TLAC/MREL-Eligible Instruments shall not be “reasonably foreseeable” shall, without limitation, be deemed to include where such non-qualification arises as a result of (a) any legislation which gives effect to the EC Proposals in the Kingdom of Spain differing in any respect from the form of the EC Proposals as published by the European Commission on 23 November 2016 (the “**Draft EC Proposals**”) (including if the EC Proposals are not implemented in full in the Kingdom of Spain) or (b) the official interpretation or application of the Draft EC Proposals or the EC Proposals as implemented in the Kingdom of Spain (including any interpretation or pronouncement by any relevant court, tribunal or authority) differing in any respect from the manner in which the Draft EC Proposals have been reflected herein.

“**TLAC/MREL-Eligible Instrument**” means an instrument that complies with the TLAC/MREL Requirements.



“**TLAC/MREL Requirement Date**” means the time from which the Company and/or the Group is obliged to meet any TLAC/MREL Requirements.

“**TLAC/MREL Requirements**” means the total loss-absorbing capacity requirements and/or minimum requirement for own funds and eligible liabilities applicable to the Company and/or the Group under the Applicable TLAC/MREL Regulations.

“**Trustee**” means the Person named as the “**Trustee**” in the first paragraph of this instrument until a successor trustee shall have become such pursuant to the applicable provisions of this Second Ranking Senior Debt Securities Indenture, and thereafter “**Trustee**” shall mean the Person who is then the Trustee hereunder, or, if a different Trustee is appointed for a particular series of Second Ranking Senior Debt Securities, the Trustee named in the relevant indenture supplemental hereto as the Trustee for that particular series of Second Ranking Senior Debt Securities and if at any time there is more than one such Person, “**Trustee**” shall mean and include each such Person; and “**Trustee**” as used with respect to the Second Ranking Senior Debt Securities of any series shall mean the Trustee with respect to the Second Ranking Senior Debt Securities of such series.

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as in effect at the date as of which this instrument was executed, except as provided in Section 9.05.

“**United States**” and “**U.S.**” mean the United States of America and, except in the case of Section 6.10 and 6.15, its territories and possessions.

“**U.S. Government Obligations**” means securities that are non-callable and nonredeemable at the option of the issuer and that are (i) direct obligations of the United States for which its full faith and credit are pledged and/or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States, the payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act of 1933, as amended), which may include the Trustee, as custodian with respect to any such U.S. Government Obligation or a specific payment of principal of or interest on any such U.S. Government Obligation held by such custodian for the account of the holder of such depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal of or interest on or other amount with respect to the U.S. Government Obligation evidenced by such depository receipt.

Section 1.02. *Compliance Certificates and Opinions.* Unless otherwise expressly provided for in this Second Ranking Senior Debt Securities Indenture, upon any application or request by the Company to the Trustee to take any action under any provision of this Second Ranking Senior Debt Securities Indenture, the Company shall





furnish to the Trustee an Officer's Certificate stating that all conditions precedent, if any, provided for in this Second Ranking Senior Debt Securities Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of the legal advisor rendering such opinion all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Second Ranking Senior Debt Securities Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Second Ranking Senior Debt Securities Indenture (other than Section 10.06) shall include:

(a) a statement that each Person signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of each such Person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such Person, such condition or covenant has been complied with.

Section 1.03. *Form of Documents Delivered to Trustee.* In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, legal advisors, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion or representations are based are erroneous. Any such certificate or opinion of, or representations by, legal advisors may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company unless such legal advisors know, or in the exercise of reasonable care should know, that the certificate or opinion or representation with respect to such matters is erroneous.



Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Second Ranking Senior Debt Securities Indenture, they may, but need not, be consolidated and form one instrument.

Section 1.04. *Acts of Holders.* (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Second Ranking Senior Debt Securities Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, when it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “**Act**” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Second Ranking Senior Debt Securities Indenture and (subject to Section 6.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. When such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Second Ranking Senior Debt Securities shall be proved by the Second Ranking Senior Debt Security Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Second Ranking Senior Debt Security shall bind every future Holder of the same Second Ranking Senior Debt Security and the Holder of every Second Ranking Senior Debt Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee, any Second Ranking Senior Debt Security Registrar, any Paying Agent, any Authenticating Agent, the Company in reliance thereon, whether or not notation of such action is made upon such Second Ranking Senior Debt Security or such other Second Ranking Senior Debt Security.

(e) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a Board Resolution or an Officer’s Certificate, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have



no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Outstanding Second Ranking Senior Debt Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Second Ranking Senior Debt Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Second Ranking Senior Debt Securities Indenture not later than six months after the record date.

Section 1.05. *Notices, Etc. to Trustee or Company.* Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Second Ranking Senior Debt Securities Indenture to be made upon, given or furnished to, or filed with,

(a) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if made, given, furnished or filed in writing (which may be via facsimile or email delivery of a copy of such document) to the Trustee at its Corporate Trust Office, and the Trustee agrees to accept and act upon facsimile transmission or email delivery of written instructions pursuant to this Second Ranking Senior Debt Securities Indenture, provided, however, that (x) the party providing such written instructions, subsequent to such transmission of written instructions, shall provide the originally executed instructions or directions to the Trustee in a timely manner, and (y) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions; or

(b) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class air mail postage prepaid, to the Company, to the address of its principal office specified in the first paragraph of this Second Ranking Senior Debt Securities Indenture or at any other address previously furnished in writing to the Trustee by the Company.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Second Ranking Senior Debt Securities Indenture sent by unsecured e-mail, portable document format (PDF), facsimile transmission or other similar unsecured electronic methods, provided, however, that the Trustee shall have received from the Company an incumbency certificate listing persons designated to give such instructions or directions and containing the titles and specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing, and provided further that the Trustee shall have no obligation or responsibility to confirm or verify that the instruction or direction was in fact sent by, or on behalf of, a person so designated to give instructions or directions. If the Company elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions,



the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding a conflict or inconsistency between such instructions and a subsequent written instruction. The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 1.06. *Notice to Holders; Waiver.* When this Second Ranking Senior Debt Securities Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if given in writing and mailed, first-class postage prepaid, to each Holder of a Second Ranking Senior Debt Security affected by such event in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act with respect to reports pursuant to Section 7.03(a).

For so long as the Second Ranking Senior Debt Securities of any series are represented by Global Securities, the Company will deliver a copy of all notices with respect to such series to the Holder (if the address of such Holder is known to the Company).

When notice to Holders of Second Ranking Senior Debt Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Second Ranking Senior Debt Securities Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 1.07. *Language of Notices, Etc.* Any notice under this Second Ranking Senior Debt Securities Indenture shall be in the English language, except that, if the Company so elects, any published notice may be in an official language of the country of publication.

Section 1.08. *Conflict with Trust Indenture Act.* If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this Second Ranking Senior Debt Securities Indenture by any of the provisions of the Trust Indenture Act, such required provision of the Trust Indenture Act shall control. If at any future time any provision required to be included herein by the Trust Indenture Act as in force at the date as of which this Second Ranking Senior Debt Securities Indenture was executed or any limitation imposed by the Trust Indenture Act at such date on any provision otherwise included herein would not be so required or imposed (in whole or in



part) if this Second Ranking Senior Debt Securities Indenture were executed at such future time, the Company and the Trustee may enter into one or more indentures supplemental hereto pursuant to Section 9.01 to change or eliminate (in whole or in part) such provision or limitation of this Second Ranking Senior Debt Securities Indenture in conformity with the requirements of the Trust Indenture Act as then in force, except that (subject to Article 9) no provision or limitation required to be included herein by Sections 310(a)(1) and (a)(2), 315(a), (c), (d)(1), (d)(2), (d)(3) and (e), 316(a)(1)(A), (a)(1)(B), (a)(2), (a) (last sentence) and (b) of the Trust Indenture Act as in force at the date as of which this Second Ranking Senior Debt Securities Indenture was executed may be so changed or eliminated.

Section 1.09. *Effect of Headings and Table of Contents.* The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.10. *Successors and Assigns.* All covenants and agreements in this Second Ranking Senior Debt Securities Indenture by the Company shall bind their respective successors and assigns, whether so expressed or not.

Section 1.11. *Separability Clause.* In case any provision in this Second Ranking Senior Debt Securities Indenture or in the Second Ranking Senior Debt Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.12. *Benefits of Second Ranking Senior Debt Securities Indenture.* Nothing in this Second Ranking Senior Debt Securities Indenture or in the Second Ranking Senior Debt Securities, express or implied, shall give to any Person, other than the parties hereto and any Second Ranking Senior Debt Securities Registrars or any Paying Agent or Calculation Agent with respect to any Second Ranking Senior Debt Securities and their successors hereunder, and the Holders of Second Ranking Senior Debt Securities, any benefit or any legal or equitable right, remedy or claim under this Second Ranking Senior Debt Securities Indenture.

Section 1.13. *Governing Law.* This Second Ranking Senior Debt Securities Indenture and the Second Ranking Senior Debt Securities shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to the choice of law provisions), except for Section 12.01, which shall be governed by and construed in accordance with the laws of Spain, and except that the authorization and execution of this Second Ranking Senior Debt Securities Indenture and the Second Ranking Senior Debt Securities shall be governed by (in addition to the laws of the State of New York relevant to execution) the respective jurisdictions of organization of the Company and the Trustee, as the case may be.

Section 1.14. *Business Days and Legal Holidays.* The terms of the Second Ranking Senior Debt Securities shall provide that, in any case where any Interest Payment Date, Redemption Date, Maturity or Stated Maturity, of a Second Ranking Senior Debt Security shall not be a Business Day at any Place of Payment, then



200FX&=&eN2mdPLLf

(notwithstanding any other provision of this Second Ranking Senior Debt Securities Indenture or the Second Ranking Senior Debt Securities other than a provision in the Second Ranking Senior Debt Securities that specifically states that such provision shall apply in lieu of this Section) payments of interest, if any (and premium, if any) or principal and the exchange of the Second Ranking Senior Debt Security need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment (or such other Business Day as shall be provided in such Second Ranking Senior Debt Security) with the same force and effect as if made on such Interest Payment Date, Redemption Date, Maturity or Stated Maturity, provided that no interest shall accrue on such payment for the period from and after such Interest Payment Date, Redemption Date, Maturity or Stated Maturity, as the case may be.

Section 1.15. *Appointment of Agent for Service.* The Company has designated and appointed Banco Santander, S.A., New York Branch, 45 E. 53<sup>rd</sup> Street, New York, New York 10022, as its authorized agent (the “**Authorized Agent**”), which process may be served in any suit or proceeding in any Federal or State court in the Borough of Manhattan, The City of New York arising out of or relating to the Second Ranking Senior Debt Securities or this Second Ranking Senior Debt Securities Indenture, but for that purpose only, and agrees that service of process upon said Authorized Agent shall be deemed in every respect effective service of process upon it in any such suit or proceeding in any Federal or State court in the Borough of Manhattan, The City of New York, New York. Such appointment shall be irrevocable so long as any of the Second Ranking Senior Debt Securities remain Outstanding until the appointment of a successor by the Company and such successor’s acceptance of such appointment. Upon such acceptance, the Company shall notify the Trustee of the name and address of such successor. The Company further agrees to take any and all action, including the execution and filing of any and all such documents and instruments, as may be necessary to continue such designation and appointment of said Authorized Agent in full force and effect so long as any of the Second Ranking Senior Debt Securities shall be Outstanding. The Trustee shall not be obligated and shall have no responsibility with respect to any failure by the Company to take any such action. The Company hereby irrevocably submits (for the purposes of any such suit or proceeding) to the non-exclusive jurisdiction of any such court in which any such suit or proceeding is so instituted, and waives, to the extent it may effectively do so, any objection it may have now or hereafter to the laying of the venue of any such suit or proceeding. To the extent that the Company may be entitled, in any jurisdiction in which judicial proceedings may at any time be commenced with respect to or arising out of this Second Ranking Senior Debt Securities Indenture to claim for itself or its revenues, assets or properties immunity (whether by reason of sovereign immunity or otherwise) from suit, from the jurisdiction of any court (including, but not limited to, any court of the United States of America or the State of New York) or from any legal process with respect to itself or its property, from attachment prior to judgment, from set-off, from execution of a judgment, from the grant of injunctive relief, whether prior to or after judgment, or from any other legal process (including, without limitation, in relation to enforcement of any arbitration award), and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), the Company hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity and consents to the grant of any such relief.



Section 1.16. *Calculation Agent.* If the Company appoints a Calculation Agent pursuant to Section 3.01 with respect to any series of Second Ranking Senior Debt Securities, any determination of the interest rate on, or other amounts in relation to, such series of Second Ranking Senior Debt Securities in accordance with the terms of such series of Second Ranking Senior Debt Securities by such Calculation Agent shall (in the absence of manifest error, bad faith or willful misconduct) be binding on the Company, the Trustee and all Holders and (in the absence of manifest error, bad faith or willful misconduct) no liability to the Holders shall attach to the Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions.

Section 1.17. *Waiver of Jury Trial.* EACH OF THE PARTIES HERETO AND EACH HOLDER OF A SECOND RANKING SENIOR DEBT SECURITY BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SECOND RANKING SENIOR DEBT SECURITIES INDENTURE, THE SECOND RANKING SENIOR DEBT SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 1.18. *Judgment Currency.* Any payment on account of an amount that is payable in U.S. dollars (the “**Required Currency**”) which is made to or for the account of any Holder or the Trustee in lawful currency of any other jurisdiction (the “**Judgment Currency**”), whether as a result of any judgment or order or the enforcement thereof or the liquidation of the Company shall constitute a discharge of the Company obligation under this Second Ranking Senior Debt Securities Indenture and the Second Ranking Senior Debt Securities only to the extent of the amount of the Required Currency such Holder or the Trustee, as the case may be, could purchase in the London foreign exchange markets with the amount of the Judgment Currency in accordance with normal banking procedures at the rate of exchange prevailing on the first Business Day following receipt of the payment in the Judgment Currency. If the amount of the Required Currency that could be so purchased is less than the amount of the Required Currency originally due to such Holder or the Trustee, as the case may be, the Company shall indemnify and hold harmless the Holder or the Trustee, as the case may be, from and against all loss or damage arising out of, or as a result of, such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Second Ranking Senior Debt Securities Indenture or the Second Ranking Senior Debt Securities, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by any Holder or the Trustee from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due hereunder or under any judgment or order.

ARTICLE 2  
SECOND RANKING SENIOR DEBT SECURITY FORMS

Section 2.01. *Forms Generally.* The Second Ranking Senior Debt Securities of each series shall be issuable in registered form and in such forms as shall be established by or pursuant to a Board Resolution of the Company, an Officer’s Certificate, or in one



or more indentures supplemental hereto, pursuant to Section 3.01, in each case with such insertions, omissions, substitutions and other variations as are required or permitted by this Second Ranking Senior Debt Securities Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with any applicable law or rule or regulation made pursuant thereto or with the rules of any securities exchange or Depository therefor, or as may, consistently herewith, be determined by the officers executing such Second Ranking Senior Debt Securities, all as evidenced by any such execution.

The Trustee’s certificates of authentication shall be in substantially the form set forth in Section 2.02 or Section 6.15.

Any definitive Second Ranking Senior Debt Securities shall be printed, lithographed or engraved or produced by any combination of these methods or may be produced in any other manner permitted by the rules of any securities exchange on which the Second Ranking Senior Debt Securities may be listed, all as determined by the officers executing such Second Ranking Senior Debt Securities, as evidenced by their execution thereof.

Section 2.02. *Form of Trustee’s Certificate of Authentication.* The Trustee’s certificate of authentication shall be in substantially the following form:

CERTIFICATE OF AUTHENTICATION

This is one of the Second Ranking Senior Debt Securities of the series designated herein referred to in the within-mentioned Second Ranking Senior Debt Securities Indenture.

Date: \_\_\_\_\_

THE BANK OF NEW YORK MELLON, as  
Trustee

By: \_\_\_\_\_  
Authorized Signatory





ARTICLE 3  
THE SECOND RANKING SENIOR DEBT SECURITIES

Section 3.01. *Amount Unlimited, Issuable in Series.* The aggregate principal amount of Second Ranking Senior Debt Securities which may be authenticated and delivered under this Second Ranking Senior Debt Securities Indenture is unlimited. The Second Ranking Senior Debt Securities may be issued in one or more series.

There shall be established by or pursuant to a Board Resolution of the Company, or established by an Officer's Certificate, or established in one or more indentures supplemental hereto, prior to the initial issuance of Second Ranking Senior Debt Securities of any series,

(a) the title of the Second Ranking Senior Debt Securities of the series (which shall distinguish the Second Ranking Senior Debt Securities of the series from all other Second Ranking Senior Debt Securities);

(b) the price or prices (expressed as a percentage of the principal amount thereof) at which the Second Ranking Senior Debt Securities of the series shall be issued;

(c) any limit upon the aggregate principal amount of the Second Ranking Senior Debt Securities of the series which may be authenticated and delivered under this Second Ranking Senior Debt Securities Indenture (except for Second Ranking Senior Debt Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Second Ranking Senior Debt Securities of the series pursuant to Section 3.04, 3.05, 3.06, 9.06 or 11.07 and except for any Second Ranking Senior Debt Securities which, pursuant to Section 3.03 are deemed never to have been authenticated and delivered hereunder);

(d) the date or dates, if any, on which the principal of (and premium, if any, on) the Second Ranking Senior Debt Securities of the series is payable;

(e) the rate or rates, if any, at which the Second Ranking Senior Debt Securities of the series shall accrue interest or the manner of calculation of such rate or rates, if any, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable or the manner of determination of such Interest Payment Dates, if other than as specified in Section 3.07 and the Regular Record Date for the interest payable on any Interest Payment Date and any dates required to be established pursuant to Section 7.01;

(f) whether any premium, upon redemption or otherwise, shall be payable by the Company on Second Ranking Senior Debt Securities of the series, and whether such premium shall be redeemable at the option of the Company or the Holder;

(g) the place or places where the principal of (and premium, if any) and any interest on Second Ranking Senior Debt Securities of the series shall be payable, and the Paying Agent or Paying Agents who shall be authorized to pay principal of (and



premium, if any) and interest on Second Ranking Senior Debt Securities of such series, at least one of such Paying Agents having offices or agencies in the Borough of Manhattan, The City of New York;

(h) other than with respect to any redemption of the Second Ranking Senior Debt Securities pursuant to Section 11.08, whether or not such series of Second Ranking Senior Debt Securities are to be redeemable, in whole or in part, at the Company's option and, if so redeemable, the period or periods within which, the price or prices at which and the terms and conditions upon which, Second Ranking Senior Debt Securities of the series may be redeemed, including the date referred to in Section 11.08;

(i) the obligation, if any, of the Company to redeem or purchase Second Ranking Senior Debt Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which, and the terms and conditions upon which Second Ranking Senior Debt Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(j) if other than denominations of \$1,000 and any multiple thereof, the denominations in which Second Ranking Senior Debt Securities of the series in each applicable form shall be issuable;

(k) if other than the full principal amount thereof, the portion, or the manner of calculation of such portion, of the principal amount of Second Ranking Senior Debt Securities of the series which shall be payable upon a declaration of acceleration or acceleration of the Maturity thereof pursuant to Section 5.02, upon redemption of Second Ranking Senior Debt Securities of any series which are redeemable before their Stated Maturity, or which the Trustee shall be entitled to file and prove a claim pursuant to Section 5.04;

(l) if Additional Amounts, pursuant to Section 10.04, will not be payable;

(m) if other than Dollars, provisions, if any, for the Second Ranking Senior Debt Securities of the series to be denominated, and payments thereon to be made, in Foreign Currencies and specifying the Place of Payment and the manner of payment thereon and any other terms with respect thereto;

(n) if other than the coin or currency in which the Second Ranking Senior Debt Securities of that series are denominated, the coin or currency in which payment of the principal of (and premium, if any) or interest, if any, on the Second Ranking Senior Debt Securities of such series shall be payable;

(o) if the principal of (and premium, if any) or interest, if any, on the Second Ranking Senior Debt Securities of such series are to be payable, at the election of the Company or a Holder thereof, in a coin or currency other than that in which the Second Ranking Senior Debt Securities are denominated, the period or periods within which, and the terms and conditions upon which, such election may be made;



(p) whether the Second Ranking Senior Debt Securities of the series shall be issued in whole or in part in the form of one or more Global Securities and the initial Holder with respect to such Global Security or Second Ranking Senior Debt Securities;

(q) if the Second Ranking Senior Debt Securities of such series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Second Ranking Senior Debt Security of such series or otherwise) only upon receipt of certain certificates or other documents or satisfaction of other conditions, then the form and terms of such certificates, documents or conditions;

(r) if the amounts of payments of principal of (and premium, if any) or interest, if any, on the Second Ranking Senior Debt Securities of the series may be determined with reference to an index or are otherwise not fixed on the original issue date thereof, the manner in which such amounts shall be determined and the Calculation Agent, if any, who shall be appointed and authorized to calculate such amounts;

(s) any other Events of Default or covenants with respect to the Second Ranking Senior Debt Securities of such series;

(t) the forms of Second Ranking Senior Debt Securities of the series;

(u) any other terms of the series (which terms shall not be inconsistent with the provisions of this Second Ranking Senior Debt Securities Indenture, except as permitted by Section 9.01(d)); and

(v) the Trustee for such series of Second Ranking Senior Debt Securities who shall also be named in an indenture supplemental hereto for a particular series of Second Ranking Senior Debt Securities if the Trustee for such series is not the Trustee named in the first paragraph of this Second Ranking Senior Debt Securities Indenture.

All Second Ranking Senior Debt Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to such action or in any such Officer's Certificate or indenture supplemental hereto.

If the forms of Second Ranking Senior Debt Securities of any series, or any of the terms thereof, are established by action taken pursuant to a Board Resolution, a copy of the Board Resolution in respect thereof shall be delivered to the Trustee at or prior to the delivery of the Company Order pursuant to Section 3.03 for the authentication and delivery of such Second Ranking Senior Debt Securities.

Section 3.02. *Denominations.* The Second Ranking Senior Debt Securities of each series shall be issuable in such denominations as shall be specified as contemplated by Section 3.01. In the absence of any such specification with respect to Second Ranking Senior Debt Securities of any series, the Second Ranking Senior Debt Securities of each series shall be issuable in denominations of \$1,000 each and any integral multiple thereof. Unless otherwise specified in accordance with Section 3.01, any Global Security issued and delivered to the Holder shall be issued in the form of units with each \$1,000 principal amount of such Global Security constituting one unit.



Section 3.03. *Execution, Authentication, Delivery and Dating.* The Second Ranking Senior Debt Securities shall be executed on behalf of the Company by any one of the representatives of the Company authorized to do so by Board Resolution or by any member of the Board of Directors. The signature of any of these authorized representatives on the Second Ranking Senior Debt Securities may be manual or facsimile. Second Ranking Senior Debt Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officer of the Company shall bind the Company, notwithstanding that such individual has ceased to hold such office prior to the authentication and delivery of such Second Ranking Senior Debt Securities.

At any time and from time to time after the execution and delivery of this Second Ranking Senior Debt Securities Indenture, the Company may deliver Second Ranking Senior Debt Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Second Ranking Senior Debt Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Second Ranking Senior Debt Securities. In authenticating such Second Ranking Senior Debt Securities and accepting the additional responsibilities under this Second Ranking Senior Debt Securities Indenture in relation to such Second Ranking Senior Debt Securities the Trustee shall be entitled to receive, and (subject to Section 6.01) shall be fully protected in relying upon an Opinion of Counsel stating that the form and terms thereof have been established in conformity with the provisions of this Second Ranking Senior Debt Securities Indenture.

If all the Second Ranking Senior Debt Securities of any series are not to be issued at one time, it shall not be necessary to deliver an Opinion of Counsel and an Officer's Certificate at the time of issuance of each Second Ranking Senior Debt Security, but such opinion and certificate, with appropriate modifications, shall be delivered at or before the time of issuance of the first Second Ranking Senior Debt Security of such series. After any such first delivery, any separate request by the Company that the Trustee authenticate Second Ranking Senior Debt Securities of such series for original issue will be deemed to be a certification by the Company that all conditions precedent provided for in this Second Ranking Senior Debt Securities Indenture relating to authentication and delivery of such Second Ranking Senior Debt Securities continue to have been complied with.

The Trustee shall not be required to authenticate such Second Ranking Senior Debt Securities if the issue of such Second Ranking Senior Debt Securities pursuant to this Second Ranking Senior Debt Securities Indenture will affect the Trustee's own rights, duties or immunities under the Second Ranking Senior Debt Securities and this Second Ranking Senior Debt Securities Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Each Second Ranking Senior Debt Security shall be dated the date of its authentication.



200FX&=&eN2nWseLY

No Second Ranking Senior Debt Security appertaining thereto shall be entitled to any benefit under this Second Ranking Senior Debt Securities Indenture or be valid or obligatory for any purpose unless there appears on such Second Ranking Senior Debt Security a certificate of authentication substantially in the form provided for herein executed by or on behalf of the Trustee by manual signature, and such certificate upon any Second Ranking Senior Debt Security shall be conclusive evidence, and the only evidence, that such Second Ranking Senior Debt Security has been duly authenticated and delivered hereunder and that such Second Ranking Senior Debt Security is entitled to the benefits of this Second Ranking Senior Debt Securities Indenture. Notwithstanding the foregoing, if any Second Ranking Senior Debt Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Second Ranking Senior Debt Security to the Trustee for cancellation as provided in Section 3.09, for all purposes of this Second Ranking Senior Debt Securities Indenture, such Second Ranking Senior Debt Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefit of this Second Ranking Senior Debt Securities Indenture.

Section 3.04. *Temporary Second Ranking Senior Debt Securities.* Pending the preparation of definitive Second Ranking Senior Debt Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Second Ranking Senior Debt Securities, substantially of the tenor of the definitive Second Ranking Senior Debt Securities in lieu of which they are issued, and, if applicable, which Second Ranking Senior Debt Securities may be printed, lithographed, typewritten, photocopied or otherwise produced. Temporary Second Ranking Senior Debt Securities shall be issuable as Second Ranking Senior Debt Securities in registered form in any authorized denomination, and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Second Ranking Senior Debt Securities may determine, all as evidenced by such execution.

If temporary Second Ranking Senior Debt Securities of any series are issued, the Company will cause, if so required by the terms of such temporary Second Ranking Senior Debt Securities, definitive Second Ranking Senior Debt Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Second Ranking Senior Debt Securities of such series, the temporary Second Ranking Senior Debt Securities of such series shall be exchangeable for definitive Second Ranking Senior Debt Securities of such series containing identical terms and provisions upon surrender of the temporary Second Ranking Senior Debt Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Second Ranking Senior Debt Securities of any series the Company shall execute, and the Trustee shall authenticate and deliver in exchange therefor, a like aggregate principal amount of definitive Second Ranking Senior Debt Securities of the same series of authorized denominations containing identical terms and provisions. Until so exchanged, unless otherwise provided therein or in a supplemental indenture relating thereto, the temporary Second Ranking Senior Debt Securities of any series shall in all respects be entitled to the same benefits (but shall be subject to all the limitations of rights) under this Second Ranking Senior Debt Securities Indenture as definitive Second Ranking Senior Debt Securities of such series.



Section 3.05. *Registration, Registration of Transfer and Exchange.* (a) *Global Securities.* This Section 3.05(a) shall apply to Global Securities unless otherwise specified, as contemplated by Section 3.01.

Except as otherwise specified as contemplated by Section 3.01 hereof, the Second Ranking Senior Debt Securities shall be initially issued and represented by one or more Global Securities in registered form which shall be authenticated as contemplated by this Second Ranking Senior Debt Securities Indenture.

Each Global Security authenticated under this Second Ranking Senior Debt Securities Indenture shall be registered in the name of the Depository designated for such Global Security or a nominee thereof and delivered to such Depository or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Second Ranking Senior Debt Security for all purposes of this Second Ranking Senior Debt Securities Indenture. Except as otherwise specified as contemplated by Section 3.01 hereof, each Global Security authenticated under this Second Ranking Senior Debt Securities Indenture shall be initially registered in the name of DTC or its nominee only.

Unless the Global Security is presented by an authorized representative of the Holder to the Company or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of a nominee of the Holder and any payment is made to such nominee, any transfer, pledge or other use of the Global Security for value or otherwise shall be wrongful since the registered owner of such Global Security, the nominee of the Holder, has an interest in such Global Security.

Except as otherwise specified as contemplated by Section 3.01 hereof, any Global Security shall be exchangeable for definitive Second Ranking Senior Debt Securities only as provided in this paragraph. A Global Security shall be exchangeable pursuant to this Section only (i) if the relevant Depository notifies the Trustee that it is unwilling or unable to continue to act as Depository and a successor depository is not appointed by the Trustee within 120 days of such notification, (ii) if, in the event of a winding-up of the Company, the Company fails to make a payment on the Second Ranking Senior Debt Securities when due, or (iii) at any time if the Company at its option and in its sole discretion determines that the Global Securities of a particular series should be exchanged for definitive Second Ranking Senior Debt Securities of that series. Any Global Security that is exchangeable pursuant to the preceding sentence shall be exchangeable for, unless otherwise specified or contemplated by Section 3.01, definitive Second Ranking Senior Debt Securities bearing interest (if any) at the same rate or pursuant to the same formula, having the same date of issuance, the same date or dates from which such interest shall accrue, the same Interest Payment Dates on which such interest shall be payable or the manner of determination of such Interest Payment Dates, redemption provisions, if any, specified currency and other terms and of differing denominations aggregating a like amount as the Global Security so exchangeable. Definitive Second Ranking Senior Debt Securities shall be registered in the names of the owners of the beneficial interests in such Global Securities as such names are from time to time provided by the Holder to the Trustee.



Any Global Security that is exchangeable pursuant to the preceding paragraph, unless otherwise specified as contemplated by Section 3.01, shall be exchangeable for Second Ranking Senior Debt Securities issuable in authorized denominations of a like aggregate principal amount and tenor.

No Global Security may be transferred except as a whole by the Holder to a nominee of the Holder or by the Holder or any such nominee to a successor of the Holder or a nominee of such successor. Except as provided above, owners solely of beneficial interests in a Global Security shall not be entitled to receive physical delivery of Second Ranking Senior Debt Securities in definitive form and will not be considered the holders thereof for any purpose under this Second Ranking Senior Debt Securities Indenture.

In the event that a Global Security is surrendered for redemption in part pursuant to Section 11.07, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Global Security, without service charge, a new Global Security in a denomination equal to and in exchange for the unredeemed or unexchanged portion of the principal of the Global Security so surrendered.

The Agent Members and any other beneficial owners shall have no rights under this Second Ranking Senior Debt Securities Indenture with respect to any Global Security held on their behalf by a Holder, and such Holder may be treated by the Company, the Trustee, and any agent of the Company or the Trustee, as the owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall (i) prevent the Company, the Trustee, or any agent of the Company or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by a Holder or (ii) impair, as between any such Holder or other clearance service and its Agent Members and Holders, the operation of customary practices governing the exercise of the rights of a holder of any security, including without limitation the granting of proxies or other authorization of participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under this Second Ranking Senior Debt Securities Indenture.

In connection with any exchange of interests in a Global Security for definitive Second Ranking Senior Debt Securities of another authorized form, as provided in this Section 3.05, then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Company shall deliver to the Trustee definitive Second Ranking Senior Debt Securities in aggregate principal amount equal to the principal amount of such Global Security or the portion to be exchanged executed by the Company. On or after the earliest date on which such interests may be so exchanged, such Global Security shall be surrendered by the Holder to the Trustee, as the Company's agent for such purpose, to be exchanged, in whole or from time to time in part, for definitive Second Ranking Senior Debt Securities without charge (in which case the Company or Trustee may require payment of any taxes or governmental charges arising) and the Trustee shall authenticate and deliver, in exchange for each portion of



such Global Security, an equal aggregate principal amount of definitive Second Ranking Senior Debt Securities of authorized denominations as the portion of such Global Security to be exchanged. Any Global Security that is exchangeable pursuant to this Section 3.05 shall be exchangeable for Second Ranking Senior Debt Securities issuable in the denominations specified as contemplated by Section 3.01 and registered in such names as the Holder of such Global Security shall direct. If a definitive Second Ranking Senior Debt Security is issued in exchange for any portion of a Global Security after the close of business at the office or agency where such exchange occurs on any record date and before the opening of business at such office or agency on the relevant Interest Payment Date, interest will not be payable on such Interest Payment Date in respect of such definitive Second Ranking Senior Debt Security, but will be payable on such Interest Payment Date only to the Person to whom payments of interest in respect of such portion of such Global Security are payable.

A Depositary may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a holder is entitled to take under this Second Ranking Senior Debt Securities Indenture with respect to the Second Ranking Senior Debt Securities.

(b) Except as otherwise specified pursuant to Section 3.01, Second Ranking Senior Debt Securities of any series may only be exchanged for a like aggregate principal amount of Second Ranking Senior Debt Securities of such series of other authorized denominations containing identical terms and provisions. Second Ranking Senior Debt Securities to be exchanged shall be surrendered at an office or agency of the Company designated pursuant to Section 10.02 for such purpose, and the Company shall execute, and the Trustee shall authenticate and deliver, in exchange therefor the Second Ranking Senior Debt Security or Second Ranking Senior Debt Securities of the same series which the Holder making the exchange shall be entitled to receive.

Except as otherwise specified pursuant to Section 3.01, the Company shall cause to be kept in the principal corporate trust office of the Trustee a register (the register maintained in such office and in any other office or agency of the Company in a Place of Payment being herein sometimes collectively referred to as the “**Second Ranking Senior Debt Security Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Second Ranking Senior Debt Securities and of transfers of such Second Ranking Senior Debt Securities. Except as otherwise specified pursuant to Section 3.01, the Trustee is hereby appointed “**Second Ranking Senior Debt Security Registrar**” for the purpose of registering Second Ranking Senior Debt Securities and transfers of Second Ranking Senior Debt Securities as herein provided.

Second Ranking Senior Debt Securities shall be transferable only on the Second Ranking Senior Debt Security Register. Upon surrender for registration of transfer of any Second Ranking Senior Debt Security of any series, together with the form of transfer endorsed on it, duly completed and executed at an office or agency of the Company designated pursuant to Section 10.02 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver to the address specified in the form of transfer,





within three Business Days, in the name of the designated transferee or transferees, one or more new Second Ranking Senior Debt Securities of the same series of any authorized denominations containing identical terms and provisions, of a like aggregate principal amount. If only part of a Second Ranking Senior Debt Security is transferred, a new Second Ranking Senior Debt Security of an aggregate principal amount equal to the amount not being transferred shall be executed by the Company, and authenticated and delivered by the Trustee to the transferor, in the name of the transferor, within three Business Days after the Trustee acting as Paying Agent pursuant to Section 10.02 receives the Second Ranking Senior Debt Security. The new Second Ranking Senior Debt Security will be delivered to the transferor by uninsured post at the risk of the transferor to the address of the transferor appearing in the Second Ranking Senior Debt Security Register. A new Second Ranking Senior Debt Security of an aggregate principal amount equal to the amount being transferred shall be delivered by the Trustee to the transferee, in the name of the transferee, within three Business Days after the Trustee acting as Paying Agent pursuant to Section 10.02 receives the Second Ranking Senior Debt Security. The new Second Ranking Senior Debt Security will be delivered to the transferee by uninsured post at the risk of the transferee to the address of the transferee specified in the form of transfer.

All Second Ranking Senior Debt Securities issued upon any registration of transfer or exchange of Second Ranking Senior Debt Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Second Ranking Senior Debt Securities Indenture, as the Second Ranking Senior Debt Securities surrendered upon such registration of transfer or exchange.

Every Second Ranking Senior Debt Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Second Ranking Senior Debt Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Second Ranking Senior Debt Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Second Ranking Senior Debt Securities, other than exchanges pursuant to Section 3.04, Section 9.06 or Section 11.07 not involving any transfer.

The Company shall not be required (i) to issue, register the transfer of or exchange any Second Ranking Senior Debt Security of any series during a period beginning at the opening of business 15 days before the day of the giving of a notice of redemption of Second Ranking Senior Debt Securities of such series selected for redemption under Section 11.03 and ending at the close of business on the day of the giving of such notice, or (ii) to register the transfer of or exchange any Second Ranking Senior Debt Security so selected for redemption in whole or in part, except the unredeemed portion of any Second Ranking Senior Debt Securities being redeemed in part.



Section 3.06. *Mutilated, Destroyed, Lost and Stolen Second Ranking Senior Debt Securities.* If any mutilated Second Ranking Senior Debt Security (including any Global Security) is surrendered to the Trustee, the Company may execute and the Trustee shall, in the case of a Second Ranking Senior Debt Security, authenticate and deliver in exchange therefor a new Second Ranking Senior Debt Security of the same series containing identical terms and provisions and of like amount, and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Second Ranking Senior Debt Security (including any Global Security) and (ii) such security or indemnity as may be required by them to save each of them and any agent of any of them harmless, then, in the absence of notice to the Company or the Trustee that such Second Ranking Senior Debt Security has been acquired by a bona fide purchaser, the Company shall execute and upon the Company's request the Trustee shall authenticate and deliver in lieu of any such destroyed, lost or stolen Second Ranking Senior Debt Security a new Second Ranking Senior Debt Security of the same series containing identical terms and provisions and of like amount, and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Second Ranking Senior Debt Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Second Ranking Senior Debt Security, pay such Second Ranking Senior Debt Security.

Upon the issuance of any new Second Ranking Senior Debt Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Second Ranking Senior Debt Security of any series issued pursuant to this Section in lieu of any destroyed, lost or stolen Second Ranking Senior Debt Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Second Ranking Senior Debt Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Second Ranking Senior Debt Securities Indenture equally and proportionately with any and all other Second Ranking Senior Debt Securities of that series duly issued hereunder.

The provisions of this Section, as amended or supplemented pursuant to this Second Ranking Senior Debt Securities Indenture, are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Second Ranking Senior Debt Securities.

Section 3.07. *Payment; Interest Rights and Rights to Additional Amounts Preserved.* Except as otherwise provided as contemplated by Section 3.01 with respect to any series of Second Ranking Senior Debt Securities, interest, if any, and any Additional Amounts on any Second Ranking Senior Debt Securities which is payable, and is paid or duly provided for, on any Interest Payment Date shall be paid to the Holder (including through a Paying Agent of the Company designated pursuant to Section 3.01 for collection by the Holder) at the close of business on the Regular Record Date.



In the case of Second Ranking Senior Debt Securities where payment is to be made in Dollars, payment at any Paying Agent's office outside The City of New York will be made in Dollars by check drawn on, or, at the request of the Holder, by transfer to a Dollar account maintained by the payee with, a bank in The City of New York.

In the case of Second Ranking Senior Debt Securities where payment is to be made in a Foreign Currency, payment will be made as established pursuant to Section 3.01.

Any interest on and any Additional Amounts with respect to any Second Ranking Senior Debt Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date is herein called "**Default Interest**". Default Interest on any Second Ranking Senior Debt Security of any series shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue then of having been such Holder, and such Default Interest may be paid by the Company, at its election, in each case, as provided in clause (a) or (b) below:

(a) The Company may elect to make payment of any Default Interest to the Persons in whose names the Second Ranking Senior Debt Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Default Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Default Interest proposed to be paid on each Second Ranking Senior Debt Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Default Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Default Interest as in this clause provided. Thereupon the Company shall fix a Special Record Date for the payment of such Default Interest in respect of such Second Ranking Senior Debt Securities of such series which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after it delivers to the Trustee notice of the proposed payment. The Company shall promptly notify the Trustee of such Special Record Date and, in the name and at the expense of the Company, the Trustee shall cause notice of the proposed payment of such Default Interest and the Special Record Date therefor to be given in the manner and to the extent provided in Section 1.06, not less than 10 days prior to such Special Record Date. The Trustee shall, at the instruction of the Company, in the name and at the expense of the Company, cause a similar notice to be published in an Authorized Newspaper of general circulation in the Borough of Manhattan, The City of New York, but such publication shall be not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Default Interest on the Second Ranking Senior Debt Securities of such series and the Special Record Date therefor having been so given, such Default Interest on the Second Ranking Senior Debt



Securities of such series shall be paid in the case of Second Ranking Senior Debt Securities to the Persons in whose names such Second Ranking Senior Debt Securities (or their respective Predecessor Securities) are registered in the Second Ranking Senior Debt Security Register at the close of business on the Special Record Date, and such Default Interest shall no longer be payable pursuant to the following clause (b); or

(b) The Company may make payment of any Default Interest on the Second Ranking Senior Debt Securities of any series to the Persons in whose names the Second Ranking Senior Debt Securities are registered in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Second Ranking Senior Debt Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Second Ranking Senior Debt Security delivered under this Second Ranking Senior Debt Securities Indenture upon registration of transfer of or in exchange for or in lieu of any other Second Ranking Senior Debt Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Second Ranking Senior Debt Security.

Section 3.08. *Persons Deemed Owners.* Prior to due presentment of a Second Ranking Senior Debt Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Second Ranking Senior Debt Security is registered as the owner of such Second Ranking Senior Debt Security for the purpose of receiving payment of principal of (and premium, if any) and interest, if any, on and any Additional Amounts with respect to such Second Ranking Senior Debt Security and for all other purposes whatsoever, whether or not such Second Ranking Senior Debt Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary. The aggregate principal amount of the Second Ranking Senior Debt Securities of any series shall be reflected on the books and records of the Second Ranking Senior Debt Security Registrar.

None of the Company, the Trustee, the Paying Agent or the Second Ranking Senior Debt Security Registrar shall have any responsibility or obligation to any beneficial owner in a Global Security, an Agent Member or other Person with respect to the accuracy of the records of the Depository or its nominee or of any Agent Member, with respect to any ownership interest in the Second Ranking Senior Debt Securities or with respect to the delivery to any Agent Member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Second Ranking Senior Debt Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Second Ranking Senior Debt Securities and this Second Ranking Senior Debt Securities Indenture shall be given or made only to or upon the order of the registered holders (which shall be the Depository or its nominee in the case of the Global Security). The rights of beneficial owners in the Global Security shall be



exercised only through the Depositary subject to the applicable procedures. The Company, the Trustee, the Paying Agent and the Second Ranking Senior Debt Security Registrar shall be entitled to rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its members, participants and any beneficial owners. The Company, the Trustee, the Paying Agent and the Second Ranking Senior Debt Security Registrar shall be entitled to deal with the Depositary, and any nominee thereof, that is the registered holder of any Global Security for all purposes of this Second Ranking Senior Debt Securities Indenture relating to such Global Security (including the payment of principal, premium, if any, and interest and additional amounts, if any, and the giving of instructions or directions by or to the owner or holder of a beneficial ownership interest in such Global Security) as the sole holder of such Global Security and shall have no obligations to the beneficial owners thereof. None of the Company, the Trustee, the Paying Agent or the Second Ranking Senior Debt Security Registrar shall have any responsibility or liability for any acts or omissions of the Depositary with respect to such Global Security, for the records of any such Depositary, including records in respect of beneficial ownership interests in respect of any such Global Security, for any transactions between the Depositary and any Agent Member or between or among the Depositary, any such Agent Member and/or any holder or owner of a beneficial interest in such Global Security, or for any transfers of beneficial interests in any such Global Security.

Notwithstanding the foregoing, with respect to any Global Security, nothing herein shall prevent the Company, the Trustee, or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by any Depositary (or its nominee), as a Holder, with respect to such Global Security or shall impair, as between such Depositary and owners of beneficial interests in such Global Security, the operation of customary practices governing the exercise of the rights of such Depositary (or its nominee) as Holder of such Global Security.

Each Holder and beneficial owner that acquires its Second Ranking Senior Debt Security in the secondary market shall be deemed to acknowledge and agree to be bound by and consent to the same provisions specified in this Second Ranking Senior Debt Securities Indenture and the Second Ranking Senior Debt Securities to the same extent as the Holders and beneficial owners of the Second Ranking Senior Debt Securities that acquire the Second Ranking Senior Debt Securities upon their initial issuance, including, without limitation, with respect to the acknowledgement and agreement to be bound by and consent to the terms of the Second Ranking Senior Debt Securities, including in relation to the Bail-in Power.

Section 3.09. *Cancellation.* All Second Ranking Senior Debt Securities surrendered for payment, redemption, registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Second Ranking Senior Debt Securities previously authenticated and delivered hereunder and all Second Ranking Senior Debt Securities so delivered shall be promptly cancelled by the Trustee. No Second Ranking Senior Debt Securities shall be authenticated in lieu of or in exchange for any Second Ranking Senior Debt Securities



200FX&=8eN2m6PuLw

cancelled as provided in this Section, except as expressly permitted by the provisions of the Second Ranking Senior Debt Securities of any series or pursuant to the provisions of this Second Ranking Senior Debt Securities Indenture. The Trustee shall deliver to the Company all cancelled Second Ranking Senior Debt Securities held by the Trustee.

Section 3.10. *Computation of Interest.* Except as otherwise specified pursuant to Section 3.01 for Second Ranking Senior Debt Securities of any series, payments of interest on the Second Ranking Senior Debt Securities of each series shall be computed on the basis of a 360- day year of twelve 30-day months.

Section 3.11. *CUSIP Numbers.* The Company in issuing any series of the Second Ranking Senior Debt Securities may use “**CUSIP**”, “**ISIN**” and/or “**Common Code**” and/or other similar numbers (if then generally in use) or any successor to such numbers and thereafter with respect to such series, the Trustee shall use “**CUSIP**”, “**ISIN**” and/or “**Common Code**” and/or other similar numbers or successor numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Second Ranking Senior Debt Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Second Ranking Senior Debt Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the “**CUSIP**”, “**ISIN**” and/or “**Common Code**” and/or other similar numbers or successor numbers.

Section 3.12. *Additional Second Ranking Senior Debt Securities.* The Company may, from time to time, without the consent of the Holders of the Second Ranking Senior Debt Securities of any series, issue additional Second Ranking Senior Debt Securities (“**Additional Second Ranking Senior Debt Securities**”) of one or more of the series of Second Ranking Senior Debt Securities issued under this Second Ranking Senior Debt Securities Indenture, having the same ranking and same interest rate, Maturity, redemption terms and other terms, except for the price to the public, original interest accrual date, issue date and first Interest Payment Date, as the Second Ranking Senior Debt Securities; *provided*, however, that such Additional Second Ranking Senior Debt Securities will not have the same CUSIP, ISIN or other identifying number as the outstanding Second Ranking Senior Debt Securities of such series unless the Additional Second Ranking Senior Debt Securities are fungible with the Outstanding Second Ranking Senior Debt Securities for U.S. federal income tax purposes. Any such Additional Second Ranking Senior Debt Securities, together with the Second Ranking Senior Debt Securities of the applicable series, will constitute a single series of Second Ranking Senior Debt Securities under this Second Ranking Senior Debt Securities Indenture and shall be included in the definition of “Second Ranking Senior Debt Securities” in this Second Ranking Senior Debt Securities Indenture where the context requires.

Section 3.13. *Correction of Minor Defects in or Amendment of Second Ranking Senior Debt Securities.* If, after issuance of any Second Ranking Senior Debt Security (including any Global Security), the Company or the Trustee shall become aware of any



ambiguity, defect or inconsistency in any term of a Second Ranking Senior Debt Security or Global Security, as the case may be, or, with respect to any Second Ranking Senior Debt Security (including any Global Security) issued on or after the date hereof, the Company and the Trustee agree to amend such Second Ranking Senior Debt Security as contemplated by Section 9.01(l), the parties hereto shall provide for the execution, authentication, delivery and dating of one or more replacement Second Ranking Senior Debt Securities or Global Securities, as the case may be, pursuant to Section 3.03 hereto.

Section 3.14. *Payments Subject to Fiscal Laws.* All payments in respect of the Second Ranking Senior Debt Securities will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment (including FATCA, any regulations or agreements thereunder, any official interpretation thereof, any intergovernmental agreements with respect thereto, or any law implementing an intergovernmental agreement or any regulations or official interpretations relating thereto), but without prejudice to the provisions of Section 10.04.

ARTICLE 4  
SATISFACTION AND DISCHARGE

Section 4.01. *Satisfaction and Discharge of Second Ranking Senior Debt Securities Indenture.* This Second Ranking Senior Debt Securities Indenture shall upon Company Request, cease to be of further effect with respect to Second Ranking Senior Debt Securities of any series (except as to any surviving rights of registration of transfer or exchange of Second Ranking Senior Debt Securities of such series herein expressly provided for), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Second Ranking Senior Debt Securities Indenture with respect to the Second Ranking Senior Debt Securities of such series when:

(a) either

(i) all Second Ranking Senior Debt Securities of such series theretofore authenticated and delivered (other than (A) Second Ranking Senior Debt Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.06 and (B) Second Ranking Senior Debt Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.03) have been delivered to the Trustee for cancellation; or

(ii) all such Second Ranking Senior Debt Securities not theretofore delivered to the Trustee for cancellation:

(A) have become due and payable or will become due and payable at their Stated Maturity within one year, or

(B) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,



200FX&=8eN2mPgSL?

and the Company has deposited or caused to be deposited with the Trustee, as trust funds in trust for the purpose, an amount in cash, or U.S. Government Obligations (with respect to Second Ranking Senior Debt Securities denominated in Dollars) or Foreign Government Securities (with respect to Second Ranking Senior Debt Securities denominated in the same Foreign Currency) maturing, in the case of (A) and (B) above, as to principal and interest, if any, in such amounts and at such times as will ensure the availability of cash sufficient without reinvestment, as confirmed by a letter from an internationally recognized firm of independent public accountants (which shall not be subject to the requirements of Section 1.02) in the form of an agreed-upon procedures letter in its then customary form, to pay, satisfy and discharge all claims with respect to such Second Ranking Senior Debt Securities not theretofore delivered to the Trustee for cancellation, in the case of (A) and (B) above, for principal (and premium, if any) and accrued interest, if any, to the date of such deposit (in the case of Second Ranking Senior Debt Securities which have become due and payable) or to the Redemption Date, as the case may be;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company with respect to the Second Ranking Senior Debt Securities of such series; and

(c) the Company has delivered to the Trustee an Officer's Certificate, and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Second Ranking Senior Debt Securities Indenture with respect to the Second Ranking Senior Debt Securities of such series have been complied with.

In addition, upon the exercise of a Bail-in Power with respect to a series of Second Ranking Senior Debt Securities which results in the cancellation, or the conversion into other securities, of all the principal amount of, and interest on such Second Ranking Senior Debt Securities or such Second Ranking Senior Debt Securities otherwise ceasing to be outstanding, this Second Ranking Senior Debt Securities Indenture shall be satisfied and discharged as to such series.

Notwithstanding any satisfaction and discharge of this Second Ranking Senior Debt Securities Indenture, the obligations of the Company to the Trustee under Section 6.08, the obligations of the Trustee to any Authenticating Agent under Section 6.15 and, if cash, U.S. Government Obligations and/or Foreign Government Securities shall have been deposited with the Trustee pursuant to subclause 4.01(a)(ii) of clause 4.01(a) of this Section, the obligations of the Trustee under Section 4.02 and the last paragraph of Section 10.03 shall survive such satisfaction and discharge, including any termination under any bankruptcy law.





Section 4.02. *Defeasance and Covenant Defeasance.* (a) If, pursuant to Section 3.01, provision is made for either or both of (i) defeasance of the Second Ranking Senior Debt Securities of or within a series under subsection (b) of this Section 4.02 or (ii) covenant defeasance of the Second Ranking Senior Debt Securities of or within a series under subsection (c) of this Section 4.02, then such provisions, together with the other provisions of this Section 4.02 (with such modifications thereto as may be specified pursuant to Section 3.01 with respect to any Second Ranking Senior Debt Securities), shall be applicable to such Second Ranking Senior Debt Securities, and the Company may at its option by Company Order, at any time, with respect to such Second Ranking Senior Debt Securities elect to have Section 4.02(b) (if applicable) or Section 4.02(c) (if applicable) be applied to such Outstanding Second Ranking Senior Debt Securities upon compliance with the conditions set forth below in this Section 4.02.

(b) Upon the Company's exercise of the above option applicable to this Section 4.02(b) with respect to any Second Ranking Senior Debt Securities of or within a series, the Company shall be deemed to have been discharged from its obligations with respect to such Outstanding Second Ranking Senior Debt Securities, on the date the conditions set forth in subsection (d) of this Section 4.02 are satisfied (hereinafter, "defeasance"). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by such Outstanding Second Ranking Senior Debt Securities, and such Second Ranking Senior Debt Securities shall thereafter be deemed to be "Outstanding" only for the purposes of subsection (e) of this Section 4.02 and the other Sections of this Second Ranking Senior Debt Securities Indenture referred to in clauses (i) and (ii) below, and the Company shall be deemed to have satisfied all of its other obligations under such Second Ranking Senior Debt Securities and this Second Ranking Senior Debt Securities Indenture insofar as such Second Ranking Senior Debt Securities are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of such Outstanding Second Ranking Senior Debt Securities to receive, solely from the trust fund described in subsection (d) of this Section 4.02 and as more fully set forth in such Section, payments in respect of the principal of (and premium, if any) and interest, if any, and Additional Amounts on such Second Ranking Senior Debt Securities when such payments are due, (ii) the Company's obligations with respect to such Second Ranking Senior Debt Securities under Section 3.05, Section 3.06, Section 10.02 and Section 10.03 and with respect to the payment of Additional Amounts, if any, on such Second Ranking Senior Debt Securities as contemplated by Section 10.04, (iii) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (iv) this Section 4.02. The Company may exercise its option under this Section 4.02(b) notwithstanding the prior exercise of its option under subsection (c) of this Section 4.02 with respect to such Second Ranking Senior Debt Securities.

(c) Upon the Company's exercise of the above option applicable to this Section 4.02(c) with respect to any Second Ranking Senior Debt Securities of or within a series, the Company shall be released from, if specified pursuant to Section 3.01, their obligations under any other covenant, with respect to such Outstanding Second Ranking Senior Debt Securities on and after the date the conditions set forth in subsection (d) of



this Section 4.02 are satisfied (hereinafter, “**covenant defeasance**”), and such Second Ranking Senior Debt Securities shall thereafter be deemed to be not “Outstanding” for the purposes of any direction, waiver, consent or declaration (and the consequences of any thereof) in connection with such other covenant, but shall continue to be deemed “Outstanding” for all other purposes hereunder. For this purpose, such covenant defeasance means that, with respect to such Outstanding Second Ranking Senior Debt Securities, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such Section or such other covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or such other covenant or by reason of reference in any such Section or such other covenant to any other provision herein or in any other document and such omission to comply shall not constitute a default or an Event of Default, but, except as specified above, the remainder of this Second Ranking Senior Debt Securities Indenture and such Second Ranking Senior Debt Securities shall be unaffected thereby.

(d) The following shall be the conditions to application of subsection (b) or (c) of this Section 4.02 to any Outstanding Second Ranking Senior Debt Securities of or within a series:

(i) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 6.11 who shall agree to comply with the provisions of this Section 4.02 applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Second Ranking Senior Debt Securities, (A) an amount in Dollars or in such Foreign Currency in which such Second Ranking Senior Debt Securities are then specified as payable at Stated Maturity, or (B) U.S. Government Obligations applicable to such Second Ranking Senior Debt Securities (determined on the basis of the Currency in which such Second Ranking Senior Debt Securities are then specified as payable at Stated Maturity) which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment of principal of (and premium, if any) and interest, if any, on such Second Ranking Senior Debt Securities, money in an amount, or (C) a combination thereof, in any case, in an amount, sufficient, without consideration of any reinvestment of such principal and interest, in the opinion of an internationally recognized firm of Independent Public Accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, (y) the principal of (and premium, if any) and interest, if any, on such outstanding Second Ranking Senior Debt Securities on the Stated Maturity of such principal or installment of principal or interest and Additional Amounts and (z) any mandatory sinking fund payments or analogous payments applicable to such Outstanding Second Ranking Senior Debt Securities on the day on which such payments are due and payable in accordance with the terms of this Second Ranking Senior Debt Securities Indenture and of such Second Ranking Senior Debt Securities.



(ii) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Second Ranking Senior Debt Securities Indenture or any other material agreement or instrument to which the Company is a party or by which it is bound.

(iii) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to such Second Ranking Senior Debt Securities shall have occurred and be continuing on the date of the establishment of such trust and, with respect to legal defeasance only, at any time during the period ending on the 91st day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until the expiration of such period).

(iv) In the case of an election under subsection (b) of this Section 4.02, the Company shall have delivered to the Trustee an opinion of counsel of recognized standing stating that (A) the Company has received from the Internal Revenue Service a letter ruling, or there has been published by the Internal Revenue Service a Revenue Ruling, or (B) since the date of execution of this Second Ranking Senior Debt Securities Indenture, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the beneficial owners of such Outstanding Second Ranking Senior Debt Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such legal defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such legal defeasance had not occurred.

(v) In the case of an election under subsection (c) of this Section 4.02, the Company shall have delivered to the Trustee an opinion of counsel of recognized standing to the effect that the beneficial owners of such Outstanding Second Ranking Senior Debt Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such covenant defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred.

(vi) Such defeasance or covenant defeasance shall not cause the Trustee to have a conflicting interest within the meaning of the Trust Indenture Act (assuming all relevant Securities are in default within the meaning of such Act).

(vii) Such defeasance or covenant defeasance shall not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended, and rules and regulations adopted by the Commission thereunder, unless such trust shall be registered under such Act or exempt from registration thereunder.



(viii) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance or covenant defeasance under subsection (b) or (c) of this Section 4.02 (as the case may be) have been complied with.

(ix) Notwithstanding any other provisions of this Section 4.02(d), such defeasance or covenant defeasance shall be effected in compliance with any additional or substitute terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 3.01.

(e) Subject to the provisions of the last paragraph of Section 10.03, all money and U.S. Government Obligations (or other property as may be provided pursuant to Section 3.01) (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 4.02(e), the "Trustee") pursuant to subsection (d) of Section 4.02 in respect of any Outstanding Second Ranking Senior Debt Securities of any series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Second Ranking Senior Debt Securities and this Second Ranking Senior Debt Securities Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Second Ranking Senior Debt Securities of all sums due and to become due thereon in respect of principal (and premium, if any) and interest and Additional Amounts, if any, but such money need not be segregated from other funds except to the extent required by law.

(f) Unless otherwise specified with respect to any Second Ranking Senior Debt Security pursuant to Section 3.01, if, after a deposit referred to in Section 4.02(d)(i) has been made, (i) the Holder of a Second Ranking Senior Debt Security in respect of which such deposit was made is entitled to, and does, elect pursuant to Section 3.01 or the terms of such Second Ranking Senior Debt Security to receive payment in a Currency other than that in which the deposit pursuant to Section 4.02(d)(i) has been made in respect of such Second Ranking Senior Debt Security, or (ii) a Conversion Event occurs in respect of the Foreign Currency in which the deposit pursuant to Section 4.02(d)(i) has been made, the indebtedness represented by such Second Ranking Senior Debt Security thereof shall be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of (and premium, if any), interest, if any, and Additional Amounts, if any, on such Second Ranking Senior Debt Security as the same becomes due out of the proceeds yielded by converting (from time to time as specified below in the case of any such election) the amount or other property deposited in respect of such Second Ranking Senior Debt Security into the Currency in which such Second Ranking Senior Debt Security becomes payable as a result of such election or Conversion Event based on the applicable market exchange rate for such Currency in effect on the second Business Day prior to each payment date, except, with respect to a Conversion Event, for such Foreign Currency in effect at the time of the Conversion Event.

(g) Anything in this Section 4.02 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations (or other property and any proceeds therefrom)



held by it as provided in subsection (d) of this Section 4.02 which, in the opinion of an internationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect a defeasance or covenant defeasance, as applicable, in accordance with this Section 4.02.

Section 4.03. *Application of Trust Money.* Subject to the provisions of the last paragraph of Section 10.03, all cash, U.S. Government Obligations and Foreign Government Securities deposited with the Trustee pursuant to Section 4.01 shall be held in trust and such cash and the proceeds from such U.S. Government Obligations and/or Foreign Government Securities shall be applied by it, in accordance with the provisions of the Second Ranking Senior Debt Securities of such series, and this Second Ranking Senior Debt Securities Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for the payment of which such cash, U.S. Government Obligations and/or Foreign Government Securities have been deposited with the Trustee.

Section 4.04. *Repayment to Company.* The Trustee, the Calculation Agent and any Paying Agent promptly shall pay to the Company upon Company Request any excess money, U.S. Government Obligations and/or Foreign Government Securities held by them at any time with respect to any series of Second Ranking Senior Debt Securities.

Section 4.05. *Reinstatement.* If the Trustee or any Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article 4 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Second Ranking Senior Debt Securities Indenture, the Second Ranking Senior Debt Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article 4 until such time as the Trustee or such Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article 4; provided, however, that, if the Company has made any payment of principal of or interest on any Second Ranking Senior Debt Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Second Ranking Senior Debt Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or such Paying Agent.

ARTICLE 5  
REMEDIES

Section 5.01. *Events of Default.* (a) Except as otherwise provided pursuant to Section 3.01, if any of the following events occurs and is continuing with respect to the Second Ranking Senior Debt Securities of any series it shall constitute an "Event of Default":

(i) *Non-payment:* default is made in the payment of any interest or principal due in respect of the Second Ranking Senior Debt Securities of that series or any of them and such default continues for a period of seven days (or such other period as may be specified pursuant to Section 3.01).

(ii) *Winding up:* any order is made by any competent court or resolution passed for the winding up or dissolution of the Company (except in any such case for the purpose of reconstruction or a merger or amalgamation which has been previously approved by the holders of at least a majority of the outstanding principal amount of the Second Ranking Senior Debt Securities of that series or a merger with another institution in this case even without being approved by Holders of the Second Ranking Senior Debt Securities of such series, provided that any entity that survives or is created as a result of such merger is given a rating by an internationally recognized rating agency at least equal to the then current rating of the Company at the time of such merger).



(b) Neither a cancellation of the Second Ranking Senior Debt Securities of any series, a reduction, in part or in full, of the Amounts Due on the Second Ranking Senior Debt Securities, the conversion thereof into another security or obligation of the Company or another person, in each case, as a result of the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Company, nor the exercise of any Bail-in Power or any other resolution power by the Relevant Resolution Authority with respect to such Second Ranking Senior Debt Securities, will be an Event of Default or otherwise constitute non-performance of a contractual obligation, or entitle the Holders of the Second Ranking Senior Debt Securities of such series to any remedies, which are hereby expressly waived.

(c) No exercise of a resolution tool or resolution power by the Relevant Resolution Authority or any action in compliance therewith shall constitute an Event of Default.

Section 5.02. *Enforcement of Remedies.* (a) If an Event of Default occurs as set forth in paragraph (a)(i) of Section 5.01, then the Trustee or the Holders of at least 25% in outstanding principal amount of the Second Ranking Senior Debt Securities of that series may institute proceedings for the winding up or dissolution of the Company but may take no further action in respect of such default.

(b) If an Event of Default occurs as set forth in paragraph (a)(ii) of Section 5.01, then the Trustee or the Holders of at least 25% in outstanding principal amount of the Second Ranking Senior Debt Securities of that series may declare such Second Ranking Senior Debt Securities of such series immediately due and payable whereupon the Second Ranking Senior Debt Securities of such series shall, when permitted by applicable Spanish insolvency law, become immediately due and payable at their Early Termination Amount together with all interest (if any) accrued thereon.

(c) Without prejudice to paragraphs (a)(i) and (a)(ii) of Section 5.01, the Trustee or the holders of at least 25% in outstanding principal amount of the Second



200FX&=8eN2nSpJLi

Ranking Senior Debt Securities of any series may at their discretion and without further notice, institute such proceedings against the Company as they may think fit to enforce any obligation, condition or provision binding on the Company under the Second Ranking Senior Debt Securities of such series, provided that, except as provided in Section 5.01(a)(ii) winding-up above, the Company shall not as a consequence of such proceedings be obliged to pay any sum or sums representing or measured by reference to principal or interest in respect of the Second Ranking Senior Debt Securities of such series sooner than the same would otherwise have been payable by it or any damages.

Section 5.03. *Collection of Indebtedness and Suits for Enforcement by the Trustee.* (a) If an Event of Default with respect to the Second Ranking Senior Debt Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of the Second Ranking Senior Debt Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Second Ranking Senior Debt Securities Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy, including the institution of proceedings in Spain (but not elsewhere) for the winding-up of the Company, provided that, except as provided in (b) of Section 5.02 above, the Company shall not as a consequence of such proceedings be obliged to pay any sum or sums representing or measured by reference to principal or interest in respect of the Second Ranking Senior Debt Securities of such series sooner than the same would otherwise have been payable by it or any damages.

The Holders of Second Ranking Senior Debt Securities by their acceptance thereof will be deemed to have waived any right of set-off or counterclaim or combination of accounts with respect to the Second Ranking Senior Debt Securities or this Second Ranking Senior Debt Securities Indenture (or between the obligations under or in respect of any Second Ranking Senior Debt Securities and any liability owed by a Holder to the Company) that they might otherwise have against the Company, whether before or during a winding up of the Company.

Notwithstanding the foregoing, failure to make any payment in respect of a series of Second Ranking Senior Debt Securities shall not be an Event of Default in respect of such Second Ranking Senior Debt Securities if such payment is withheld or refused and the Company delivers an Opinion of Counsel concluding that such sums were not paid in order to comply with any fiscal or other law or regulation or with the order of any court of competent jurisdiction, provided, however, that the Trustee may by notice to the Company require the Company to take such action (including but not limited to proceedings for a declaration by a court of competent jurisdiction) as the Trustee may be advised in an Opinion of Counsel, upon which opinion the Trustee may conclusively rely, is appropriate and reasonable in the circumstances to resolve such doubt, in which case the Company shall forthwith take and expeditiously proceed with such action and shall be bound by any final resolution of the doubt resulting therefrom. If any such action results in a determination that the relevant payment can be made without violating any applicable law, regulation or order then the provisions of the preceding sentence shall cease to have effect and the payment shall become due and payable on the expiration of 14 days or seven days after the Trustee gives written notice to the Company informing it of such resolution.



No recourse for the payment of the principal of (or premium, if any) or interest, if any, on any Second Ranking Senior Debt Security, or for any claim based thereon, covenant or agreement of the Company in this Second Ranking Senior Debt Securities Indenture, or in any Second Ranking Senior Debt Security, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, officer or director, past, present or future, of the Company or of any successor corporation of either the Company, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that to the extent lawful all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Second Ranking Senior Debt Securities Indenture and the issue of the Second Ranking Senior Debt Securities of a series.

Section 5.04. *Trustee May File Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition, winding-up or other judicial proceeding relative to the Company or to the property of the Company or such other obligor or their creditors (other than under or in connection with a scheme of amalgamation or reconstruction not involving bankruptcy or insolvency), the Trustee (irrespective of whether the principal of the Second Ranking Senior Debt Securities of such series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal (and premium, if any) or interest, if any) and Additional Amounts shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding; provided that the Company shall not, as a result of the bringing of such proceedings, be obliged to pay any sum representing or measured by reference to principal, premium or interest on the Second Ranking Senior Debt Securities sooner than the same would otherwise have been payable by it. In particular, the Trustee shall be authorized to collect and receive any moneys and other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder of a Second Ranking Senior Debt Security to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to such Holders or holders, to first pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due to the Trustee under Section 6.08.

Subject to Article 8 and Section 9.02, nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of any Second Ranking Senior Debt Security any plan of reorganization, arrangement, adjustment, or composition affecting any Second Ranking Senior Debt





Securities or the rights of any Holder of any Second Ranking Senior Debt Security or to authorize the Trustee to vote in respect of the claim of any such Holder in any such proceeding.

The provisions of this Section 5.04 are subject to the provisions of Article 12.

Section 5.05. *Trustee May Enforce Claims Without Possession of Second Ranking Senior Debt Securities.* All rights of action and claims under this Second Ranking Senior Debt Securities Indenture or the Second Ranking Senior Debt Securities may be prosecuted and enforced by the Trustee without the possession of any of the Second Ranking Senior Debt Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel (subject, with regard to the Company, to the provisions of Article 12) be for the ratable benefit of the Holders of the Second Ranking Senior Debt Securities in respect of which such judgment has been recovered.

Section 5.06. *Application of Money Collected.* Any money collected by the Trustee pursuant to this Article or, after an Event of Default, any money or other property distributable in respect of the Company's obligations under this Second Ranking Senior Debt Securities Indenture, in respect of any series of Second Ranking Senior Debt Securities shall, subject to the provisions of Section 5.03 in relation to waiver and set-off and Article 12 in relation to ranking, be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (and premium, if any) or interest, if any, and Additional Amounts upon presentation of such Second Ranking Senior Debt Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

*FIRST:* To the payment of all amounts applicable to such series of Second Ranking Senior Debt Securities due and owing to the Trustee (including any predecessor Trustee) under Section 6.08;

*SECOND:* Subject to Section 12.01, to the payment of the amounts then due and unpaid for principal of (and premium, if any) and interest, if any, and Additional Amounts on such series of Second Ranking Senior Debt Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Second Ranking Senior Debt Securities for principal (and premium, if any) and interest, if any, respectively; and

*THIRD:* To the payment of the balance, if any, to the Company or any other Person or Persons legally entitled thereto.

Section 5.07. *Limitation on Suits.* No Holder of any Second Ranking Senior Debt Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Second Ranking Senior Debt Securities Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to Second Ranking Senior Debt Securities of the same series specifying such Event of Default and stating that such notice is a "**Notice of Default**" hereunder;



(b) the Holders of not less than 25% in aggregate principal amount of the Outstanding Second Ranking Senior Debt Securities of such series shall have made written request to the Trustee to institute proceedings in accordance with 5.02 to 5.05 hereof in respect of such Event of Default in its own name, as Trustee hereunder;

(c) such Holder of a Second Ranking Senior Debt Security has offered to the Trustee reasonable indemnity and/or security satisfactory to it (as determined by the Trustee in its sole discretion) against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Second Ranking Senior Debt Securities of such series;

it being understood and intended that no one or more Holders of Second Ranking Senior Debt Securities of a particular series shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Second Ranking Senior Debt Securities Indenture to affect, disturb or prejudice the rights of any other such Holders or holders, or to obtain or to seek to obtain priority or preference over any other such Holders or holders or to enforce any right under this Second Ranking Senior Debt Securities Indenture, except in the manner herein provided and for the equal and ratable benefit of all Holders of Second Ranking Senior Debt Securities of such series.

Section 5.08. *Unconditional Right of Holders to Receive Principal, Premium and Interest, if any, and Additional Amounts.* Subject to Article 12 in relation to ranking of Second Ranking Senior Debt Securities and notwithstanding any other provision in this Second Ranking Senior Debt Securities Indenture, the Holder of any Second Ranking Senior Debt Security shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and interest, if any, and Additional Amounts on such Second Ranking Senior Debt Security on the respective Stated Maturities as expressed in such Second Ranking Senior Debt Security (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 5.09. *Restoration of Rights and Remedies.* If the Trustee or any Holder of any Second Ranking Senior Debt Security has instituted any proceeding to enforce any right or remedy under this Second Ranking Senior Debt Securities Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any



200FX&amp;=8eN2o82gL6

determination in such proceeding, the Company, the Trustee and the Holders of Second Ranking Senior Debt Securities shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders of Second Ranking Senior Debt Securities shall continue as though no such proceeding had been instituted.

Section 5.10. *Rights and Remedies Cumulative.* Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Second Ranking Senior Debt Securities in the last paragraph of Section 3.06 and without prejudice to Section 5.02, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Second Ranking Senior Debt Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not, subject as aforesaid, prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11. *Delay or Omission Not Waiver.* No delay or omission of the Trustee or of any Holder of any Second Ranking Senior Debt Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders of Second Ranking Senior Debt Securities may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders of Second Ranking Senior Debt Securities, as the case may be.

Section 5.12. *Control by Holders.* The Holders of a majority in aggregate principal amount of the Outstanding Second Ranking Senior Debt Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee hereunder, or exercising any trust or power conferred on the Trustee hereunder with respect to the Second Ranking Senior Debt Securities of such series, *provided that*

(a) such direction shall not be in conflict with any rule of law or with this Second Ranking Senior Debt Securities Indenture or with the Second Ranking Senior Debt Securities of any series;

(b) the Trustee shall not determine that the action so directed would be unjustly prejudicial to the Holders of any Second Ranking Senior Debt Securities of any series not taking part in such direction with respect to which the Trustee is acting as the Trustee; and

(c) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.



200FX&=8eN2oJu7sd

Section 5.13. *Waiver of Past Defaults.* The Trustee may without prejudice to its rights in respect of any subsequent Event of Default from time to time and at any time waive any Event of Default or authorize any proposed Event of Default by the Company provided that in its opinion the interests of the Holders shall not be materially prejudiced thereby and, provided, further, that the Trustee shall not exercise any powers conferred on it by this clause in contravention of any notice in writing to the Trustee made pursuant to Section 5.07 hereof but no such notice shall affect any waiver or authorization previously given or made. The Holders of not less than a majority in aggregate principal amount of the Outstanding Second Ranking Senior Debt Securities of any series may on behalf of the Holders of all the Second Ranking Senior Debt Securities of such series waive any past Event of Default hereunder with respect to such series and its consequences, except an Event of Default

(a) in the payment of the principal of (or premium, if any) or interest, if any, and Additional Amounts on any Second Ranking Senior Debt Security of such series, or

(b) in respect of a covenant or provision hereof which under Article 9 cannot be modified or amended without the consent of the Holder of each Outstanding Second Ranking Senior Debt Security of such series affected.

Upon any such waiver, such Event of Default shall cease to exist, and any Event of Default with respect to any series arising therefrom shall be deemed to have been cured and not to have occurred for every purpose of this Second Ranking Senior Debt Securities Indenture, but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

Section 5.14. *Undertaking for Costs.* All parties to this Second Ranking Senior Debt Securities Indenture agree, and each Holder of any Second Ranking Senior Debt Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Second Ranking Senior Debt Securities Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant to such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder or group of Holders holding in the aggregate more than 10% in principal amount of the Outstanding Second Ranking Senior Debt Securities of any series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest, if any, on any Second Ranking Senior Debt Security on or after the respective Stated Maturities expressed in such Second Ranking Senior Debt Security (or, in the case of redemption, on or after the Redemption Date).



ARTICLE 6  
THE TRUSTEE

Section 6.01. *Certain Duties and Responsibilities.* (a) Except during the continuance of an Event of Default,

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Second Ranking Senior Debt Securities Indenture, and no implied covenants or obligations shall be read into this Second Ranking Senior Debt Securities Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Second Ranking Senior Debt Securities Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Second Ranking Senior Debt Securities Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts, statements, opinions or conclusions stated therein).

(b) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Second Ranking Senior Debt Securities Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(c) No provision of this Second Ranking Senior Debt Securities Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(i) this paragraph (c) shall not be construed to limit the effect of paragraphs (a) or (d) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Second Ranking Senior Debt Securities of any series, determined as provided herein, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Second Ranking Senior Debt Securities Indenture with respect to the Second Ranking Senior Debt Securities of such series.



(d) No provision of this Second Ranking Senior Debt Securities Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(e) Whether or not therein expressly so provided, every provision of this Second Ranking Senior Debt Securities Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.01.

Section 6.02. *Spanish Tax Procedures and Obligations of the Trustee.* In connection with each payment made on any Payment Date (as defined in Appendix 1 attached hereto) in respect of the issued Second Ranking Senior Debt Securities hereunder, the Trustee or Paying Agent shall comply with the tax procedures set forth in Appendix 1 hereto. The Trustee or Paying Agent shall have no duty or responsibility to comply with other Spanish tax obligations arising out of this Second Ranking Senior Debt Securities Indenture. The Company shall be responsible for the payment of any and all amounts due under the Second Ranking Senior Debt Securities. Therefore, the Trustee or Paying Agent shall not be liable for any amounts owed to any person due to its failure to properly comply with the tax procedures referred to in this Section 6.02 and Appendix 1 hereto, except such as may result from the negligence, willful misconduct or fraud of the Trustee or Paying Agent or any of its agents or employees. The Trustee or Paying Agent may request and rely conclusively upon any instructions from the Company in respect of any action necessary or required to be taken by the Trustee or Paying Agent pursuant to this Section 6.02 and Appendix 1 hereto; provided, however, in no event shall the Trustee or Paying Agent be required to expend or risk its own funds in the performance of any of its duties pursuant to this Section 6.02 and Appendix 1 hereto, or be obligated to take any legal or other action which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with acceptable indemnification and security.

Section 6.03. *Notice of Defaults.* Within 90 days after the occurrence of any Event of Default hereunder with respect to Second Ranking Senior Debt Securities of any series of which a Responsible Officer of the Trustee has received written notice of such Event of Default the Trustee shall transmit in the manner and to the extent provided in Section 1.06 to Holders of Second Ranking Senior Debt Securities of such series notice of such Event of Default hereunder of which the Trustee has received written notice, unless such Event of Default shall have been cured or waived; provided, however, that, the Trustee shall be protected in withholding such notice if it determines in good faith that the withholding of such notice is in the interest of the Holders of Second Ranking Senior Debt Securities of such series.

Section 6.04. *Certain Rights of Trustee.* Subject to the provisions of Section 6.01:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, Officer's Certificate, or any other certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other evidence of indebtedness or other paper or document (whether in its original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper party or parties;



(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order, as the case may be, and any resolution of the Board of Directors of the Company may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Second Ranking Senior Debt Securities Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate and/or an Opinion of Counsel;

(d) the Trustee may consult with counsel of its own selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in conclusive reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Second Ranking Senior Debt Securities Indenture at the request or direction of any of the Holders pursuant to this Second Ranking Senior Debt Securities Indenture, unless such Holders shall have offered to the Trustee reasonable security and/or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney; at the sole reasonable cost and expense of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation; provided that the Trustee shall not be entitled to such information which the Company is prevented from disclosing as a matter of law or contract;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;



(h) the Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Second Ranking Senior Debt Securities Indenture, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(i) anything in this Second Ranking Senior Debt Securities Indenture notwithstanding, in no event shall the Trustee be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to loss or profit), even if the Trustee has been advised as to the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in negligence or otherwise;

(j) the Trustee shall not be liable with respect to any Losses arising from action taken or omitted to be taken by it in good faith in accordance with any instruction or communication received by email from any person reasonably believed by the Trustee to be authorized by the Company to send such instruction or communication, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(k) the Trustee shall not be deemed to have notice of any Event of Default unless a Responsible Officer of the Trustee has received written notice of such an Event of Default at the Corporate Trust Office of the Trustee, and such notice references the Second Ranking Senior Debt Securities and/or this Second Ranking Senior Debt Securities Indenture;

(l) the Trustee shall not be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, strikes, work stoppages, civil or military disturbances, nuclear or natural catastrophes, fire, riot, embargo, loss or malfunctions of utilities, communications or computer (software and hardware) services, government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Second Ranking Senior Debt Securities Indenture;

(m) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder; and

(n) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Second Ranking Senior Debt Securities Indenture, which certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.





Section 6.05. *Not Responsible for Recitals or Issuance of Second Ranking Senior Debt Securities.* The recitals contained herein and in the Second Ranking Senior Debt Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Second Ranking Senior Debt Securities Indenture or of the Second Ranking Senior Debt Securities, except that the Trustee represents and warrants that it has duly authorized, executed and delivered this Second Ranking Senior Debt Securities Indenture. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of Second Ranking Senior Debt Securities or the proceeds thereof. The Trustee shall not be responsible to make any calculation with respect to any matter under this Second Ranking Senior Debt Securities Indenture other than as specifically provided for herein. The Trustee shall have no duty to monitor or investigate the Company's compliance with or the breach of, or cause to be performed or observed, any representation, warranty, or covenant, or agreement of any Person, other than the Trustee, made in this Second Ranking Senior Debt Securities Indenture. No provision of this Second Ranking Senior Debt Securities Indenture shall be deemed to impose any duty or obligation on the Trustee to perform any act or acts, receive or obtain any interest in property or exercise any interest in property, or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, taxation or other consequences that, in the sole determination of the Trustee, are adverse to the Trustee, or in which the Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, to receive or obtain any such interest in property or to exercise any such right, power, duty or obligation.

Section 6.06. *May Hold Second Ranking Senior Debt Securities.* The Trustee, any Authenticating Agent, any Paying Agent, any Second Ranking Senior Debt Security Registrar and any Calculation Agent or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Second Ranking Senior Debt Securities and, subject to 6.09 and 6.14, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Second Ranking Senior Debt Security Registrar, Calculation Agent or such other agent.

Section 6.07. *Money Held in Trust.* Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

Section 6.08. *Compensation and Reimbursement.*

The Company agrees

(a) to pay to the Trustee from time to time compensation for all services rendered by it hereunder as agreed upon in writing by the Company from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);



200FX&=8eN2mSjmLz

(b) except as otherwise expressly provided herein, to reimburse the Trustee for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Second Ranking Senior Debt Securities Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as shall be determined by a court of competent jurisdiction to have been caused by its own negligence or bad faith; and

(c) to indemnify the Trustee (which for purposes of this subparagraph Section 6.08(c) shall be deemed to include its directors, officers, employees and agents) or any predecessor Trustee for, and to hold it harmless against, any and all loss, liability, claim, damage or expense (including legal fees and expenses) and taxes (other than taxes based upon, measured by or determined by the income of the Trustee) incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder including the costs and expenses of defending itself against any claim (whether asserted by the Company, or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, or in connection enforcing the provisions of this Section, but excluding any tax liabilities of the Trustee in respect of its net profits.

In addition to, but without prejudice to its other rights under this Second Ranking Senior Debt Securities Indenture, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.01, the fees, costs and expenses (including the charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law.

The Trustee shall notify the Company in writing of the commencement of any action or claim in respect of which indemnification may be sought promptly after a Responsible Officer of the Trustee becomes aware of such commencement (provided that the failure to make such notification shall not affect the Trustee's rights hereunder) and the Company shall be entitled to participate in, and to the extent it shall wish, to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Trustee. If the Company and the Trustee are being represented by the same counsel and the Company has assumed the defense of the claim, the Trustee shall not be authorized to settle a claim without the written consent of the Company, which consent shall not be unreasonably withheld.

As security for the performance of the obligations of the Company under this Section, the Trustee shall have a senior lien to which the Second Ranking Senior Debt Securities are hereby made subordinate, upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (or premium, if any) or interest, if any, on the Second Ranking Senior Debt Securities.

“Trustee” for purposes of this Section shall include any predecessor Trustee; provided, however, that the negligence, willful misconduct or bad faith of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.



200FX&=8eN2mZqNL4

The Trustee’s rights to payment of its fees, reimbursement and indemnity under, and its lien provided for in, this Section 6.08 shall survive the payment in full of the Second Ranking Senior Debt Securities, the satisfaction and discharge of this Second Ranking Senior Debt Securities Indenture, the resignation or removal of the Trustee, the termination for any reason of this Second Ranking Senior Debt Securities Indenture and the exercise of the Bail-in Power and the other relevant resolution tools by the Relevant Resolution Authority.

Section 6.09. *Disqualification; Conflicting Interests.* If the Trustee has or shall acquire a conflicting interest within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, Section 310(b) of the Trust Indenture Act and this Second Ranking Senior Debt Securities Indenture.

Section 6.10. *Corporate Trustee Required; Eligibility.* There shall at all times be a Trustee hereunder with respect to each series which shall be a Person organized and doing business under the laws of the United States, any State thereof or the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal or State or District of Columbia authority and having a corporate trust office or agency in the Borough of Manhattan, The City of New York, New York. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article 6.

Section 6.11. *Resignation and Removal; Appointment of Successor.* (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 6.12.

(b) The Trustee may resign at any time with respect to the Second Ranking Senior Debt Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.12 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Second Ranking Senior Debt Securities of such series.

(c) The Trustee may be removed at any time with respect to the Second Ranking Senior Debt Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Second Ranking Senior Debt Securities of such series delivered to the Trustee and to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.12 shall not have been delivered to the Trustee



within 30 days after the giving of such notice of removal, the Trustee may petition at the expense of the Company any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Second Ranking Senior Debt Securities of such series.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 6.09 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Second Ranking Senior Debt Security of the series as to which the Trustee has a conflicting interest for at least six months, or

(ii) the Trustee shall cease to be eligible under Section 6.10 and shall fail to resign after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Second Ranking Senior Debt Security for at least six months, or

(iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge, or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, or

(iv) the Trustee shall fail to perform its obligations to the Company under this Second Ranking Senior Debt Securities Indenture in any material respect,

then, in any such case, (A) the Company by a Board Resolution may remove the Trustee with respect to any or all series of Second Ranking Senior Debt Securities or (B) subject to Section 5.14 (and except in the case of subparagraph 6.11(d)(iv) above), any Holder who has been a bona fide Holder of a Second Ranking Senior Debt Security for at least six months (and, in the case of Section 6.11 (d)(i) above, who is a Holder of a Second Ranking Senior Debt Security of the series as to which the Trustee has a conflicting interest) may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Second Ranking Senior Debt Securities and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Second Ranking Senior Debt Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Second Ranking Senior Debt Securities of such series (it being understood that any successor Trustee may be appointed with respect to the Second Ranking Senior Debt Securities of one or more or all of such series and at any time there shall be only one Trustee with respect to the Second Ranking Senior Debt Securities of any particular series), and shall comply with the applicable requirements of Section 6.12. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Second Ranking Senior Debt Securities of any



series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Second Ranking Senior Debt Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 6.12, become the successor Trustee with respect to the Second Ranking Senior Debt Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Second Ranking Senior Debt Securities of any series shall have been so appointed by the Company or the Holders of Second Ranking Senior Debt Securities of such series and accepted appointment in the manner hereinafter required by Section 6.12, any Holder who has been a bona fide Holder of a Second Ranking Senior Debt Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Second Ranking Senior Debt Securities of such series.

(f) The Company shall give notice to Holders of each resignation and each removal of the Trustee with respect to the Second Ranking Senior Debt Securities of any series and each appointment of a successor Trustee with respect to the Second Ranking Senior Debt Securities of any series to the Holders in the manner and to the extent provided in Section 1.06. Each notice shall include the name of the successor Trustee with respect to the Second Ranking Senior Debt Securities of such series and the address of its Corporate Trust Office.

Section 6.12. *Acceptance of Appointment by Successor.* (a) In case of the appointment hereunder of a successor Trustee with respect to all Second Ranking Senior Debt Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges and subject to its lien provided for in Section 6.08, execute and deliver an instrument transferring to such successor Trustee, all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Second Ranking Senior Debt Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Second Ranking Senior Debt Securities of such series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (i) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Second Ranking Senior Debt Securities of such series to which the appointment of such successor Trustee relates, (ii) if the retiring Trustee is not retiring with respect to all Second Ranking Senior Debt Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the



rights, powers, trusts and duties of the retiring Trustee with respect to the Second Ranking Senior Debt Securities of such series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (iii) shall add to or change any of the provisions of this Second Ranking Senior Debt Securities Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Second Ranking Senior Debt Securities of such series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Second Ranking Senior Debt Securities of such series to which the appointment of such successor Trustee relates, subject to the lien provided for in Section 6.08.

(c) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (a) or (b) of this Section 6.12, as the case may be.

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article 6.

*Section 6.13. Merger, Conversion, Consolidation or Succession to Business.*

Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such Person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Second Ranking Senior Debt Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Second Ranking Senior Debt Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Second Ranking Senior Debt Securities.

*Section 6.14. Preferential Collection of Claims.* If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Second Ranking Senior Debt Securities of a series), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).



Section 6.15. *Appointment of Authenticating Agent.* The Trustee may at any time appoint an Authenticating Agent or Agents with respect to one or more series of Second Ranking Senior Debt Securities which shall be authorized to act on behalf of the Trustee to authenticate Second Ranking Senior Debt Securities of such series upon original issue, or issued upon exchange, registration of transfer or partial redemption thereof or in lieu of destroyed, lost or stolen Second Ranking Senior Debt Securities, and Second Ranking Senior Debt Securities so authenticated shall be entitled to the benefits of this Second Ranking Senior Debt Securities Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Second Ranking Senior Debt Securities Indenture to the authentication and delivery of Second Ranking Senior Debt Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation or national banking association organized and doing business under the laws of the United States, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or State or District of Columbia authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.15, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any Person into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Person succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such Person shall be otherwise eligible under this Section 6.15, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.15, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall give notice to the Holders of Second Ranking Senior Debt Securities in the manner and to the extent provided in Section 1.06. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 6.15.



200FX&=&eN2nDc0L;

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 6.15.

If an appointment with respect to one or more series is made pursuant to this Section, the Second Ranking Senior Debt Securities of such series may have endorsed thereon, in lieu of the Trustee’s certificate of authentication, an alternate certificate of authentication in substantively the following form:

This is one of the Second Ranking Senior Debt Securities referred to in the within-mentioned Second Ranking Senior Debt Securities Indenture.

THE BANK OF NEW YORK MELLON, as Trustee

By: \_\_\_\_\_  
as Authenticating Agent

By: \_\_\_\_\_  
Authorized Signatory

Section 6.16. *Appointment of Additional Trustees.* The Company may appoint a Trustee for a particular series of Second Ranking Senior Debt Securities other than the Trustee named in the first paragraph of this Second Ranking Senior Debt Securities Indenture by executing and delivering an indenture supplemental hereto where such Trustee accepts such appointment as contemplated by Section 3.01(w) and Section 9.01(k) (it being understood that at any time there shall be only one Trustee with respect to the Second Ranking Senior Debt Securities of any particular series); provided that, at the time of such acceptance, such Trustee shall be qualified and eligible under this Article 6. Upon such acceptance, such Trustee shall be vested with all the rights, powers, trusts and duties of a Trustee under this Second Ranking Senior Debt Securities Indenture with respect to the Second Ranking Senior Debt Securities of such series.

Section 6.17. *Tax Withholding.* Any amounts to be paid by the Company on the Second Ranking Senior Debt Securities shall be paid net of any deduction or withholding imposed or required pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (or any law implementing such an intergovernmental agreement) (a “**FATCA Withholding Tax**”), and the Company shall not be required to pay Additional Amounts on account of any FATCA Withholding Tax.





Any Paying Agent shall be entitled to make a deduction or withholding from any payment which it makes under the Second Ranking Senior Debt Securities and this Second Ranking Senior Debt Securities Indenture for or on account of (i) any present or future taxes, duties or charges if and to the extent so required by any applicable law and (ii) any FATCA Withholding Tax (together, “**Applicable Law**”). In either case, the Paying Agent shall make any payment after a deduction or withholding has been made pursuant to Applicable Law and shall report to the relevant authorities the amount so deducted or withheld. In all cases, the Paying Agent shall have no obligation to gross up any payment made subject to any deduction or withholding pursuant to Applicable Law. In addition, amounts deducted or withheld by the Paying Agent as described in this paragraph will be treated as paid to the Holder of the Second Ranking Senior Debt Securities, and the Company will not pay Additional Amounts in respect of such deduction or withholding, except to the extent required under Section 10.04.



ARTICLE 7  
HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 7.01. *The Company to Furnish Trustee Names and Addresses of Holders.* The Company with respect to any series of Second Ranking Senior Debt Securities, will furnish or cause to be furnished to the Trustee;

(a) not more than 15 days after each Regular Record Date (or after each of the dates to be specified for such purpose for non-interest bearing Second Ranking Senior Debt Securities and Second Ranking Senior Debt Securities on which interest is paid less frequently than quarterly as contemplated by Section 3.01), a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Second Ranking Senior Debt Securities as of such Regular Record Date or such specified date, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished.

The Company need not furnish or cause to be furnished to the Trustee pursuant to this Section 7.01 the names and addresses of Holders of Second Ranking Senior Debt Securities so long as the Trustee acts as Second Ranking Senior Debt Security Registrar with respect to such series of Second Ranking Senior Debt Securities.

Section 7.02. *Preservation of Information; Communication to Holders.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders (i) contained in the most recent list furnished to the Trustee as provided in Section 7.01 and (ii) received by the Trustee in its capacity as Paying Agent or Second Ranking Senior Debt Security Registrar (if so acting). The Trustee may dispose of any list furnished to it as provided in Section 7.01 upon receipt of a new list so furnished.

(b) The rights of the Holders of Second Ranking Senior Debt Securities of any series to communicate with other Holders with respect to their rights under this Second Ranking Senior Debt Securities Indenture or under the Second Ranking Senior Debt Securities, and the corresponding rights and privileges of the Trustee, shall be as provided by the Trust Indenture Act.

(c) Every Holder, by receiving and holding a Second Ranking Senior Debt Security, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of any of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with Section 7.02(b) or otherwise made pursuant to the Trust Indenture Act.



Section 7.03. *Reports by Trustee.*

(a) On or before May 15 in each year following the date hereof, so long as any Second Ranking Senior Debt Securities are Outstanding hereunder, the Trustee shall transmit to Holders as provided in the Trust Indenture Act a brief report dated as of a date required by and in compliance with the Trust Indenture Act.

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each securities exchange upon which the Trustee has been notified that the Second Ranking Senior Debt Securities are listed, with the Commission and with the Company. The Company will notify the Trustee when Second Ranking Senior Debt Securities are listed on any securities exchange.

Section 7.04. *Reports by the Company.* The Company shall:

(a) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Article 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of such Sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Article 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate);

(b) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Second Ranking Senior Debt Securities Indenture as may be required from time to time by such rules and regulations. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate); and

(c) transmit to Holders, in the manner and to the extent required by the Trust Indenture Act, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (a) and (b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

(d) The Trustee may conclusively presume that the Company is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise is complying with such reporting requirements unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office of the Trustee a written notification from the Company stating otherwise. The Trustee shall have no duty to examine any information, reports or other documents filed by the Company pursuant to Section 13 or 15(d) of the Exchange Act, and need make no determination as to whether they comply with the requirements of this Section 7.04, its sole duty in respect thereof being to place them in its files and make them available for inspection by any Holder upon reasonable request during normal business hours.



ARTICLE 8  
CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER

Section 8.01. *Company May Consolidate, Etc., Only on Certain Terms.* The Company may, without the consent of Holders of any Second Ranking Senior Debt Securities of any series Outstanding under this Second Ranking Senior Debt Securities Indenture, consolidate or amalgamate with or merge into any other corporation or convey or transfer or lease its properties and assets substantially as an entirety to any Person, provided that:

(a) the corporation formed by or into which the Company is consolidated, amalgamated or merged or the Person which acquires by conveyance or transfer the properties and assets of the Company substantially as an entirety (i) shall be a company organized and existing under the laws of any part of the European Union, and (ii) shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, in the case of the Company, the due and punctual payment of the principal of (and premium, if any) and interest and Additional Amounts, if any, on all the Second Ranking Senior Debt Securities in accordance with the provisions of such Second Ranking Senior Debt Securities and this Second Ranking Senior Debt Securities Indenture and the performance of every covenant of this Second Ranking Senior Debt Securities Indenture on the part of the Company to be performed or observed;

(b) immediately after giving effect to such consolidation, amalgamation, merger, conveyance or transfer, no Event of Default and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and

(c) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger, conveyance or transfer and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 8.02. *Successor Corporation Substituted.* In the event of any merger, consolidation, sale, conveyance permitted by Section 8.01 and Section 5.01 above,



Additional Amounts under the Second Ranking Senior Debt Securities will thereafter be payable in respect of taxes imposed by the acquiring corporation's, or the resulting corporation's, jurisdiction of incorporation or tax residence (subject to exceptions equivalent to those that apply to the obligation to pay Additional Amounts pursuant to Section 10.04, as the case may be, in respect of taxes imposed by the laws of the Kingdom of Spain) rather than taxes imposed by the Kingdom of Spain. Additional Amounts with respect to payments of interest or principal due prior to the date of such merger, consolidation, sale, conveyance or lease will be payable only in respect of taxes imposed by the Kingdom of Spain. The acquiring or resulting corporation will also be entitled to redeem the Second Ranking Senior Debt Securities in the circumstances described in Section 11.08 with respect to any change or amendment to, or change in the application or official interpretation of the laws or regulations of such jurisdiction, which change or amendment must occur subsequent to the date of any merger, consolidation, sale, conveyance or lease permitted by Section 8.01 and Section 5.01 if the successor entity is not incorporated or tax resident in the Kingdom of Spain. In the event of assumption of the Company's obligations in connection with a merger, consolidation, sale or conveyance of substantially all of its assets, the Company shall be released from all obligations and covenants under this Second Ranking Senior Debt Securities Indenture or the Second Ranking Senior Debt Securities and the successor corporation formed by such consolidation or amalgamation or into which the Company is merged or to which such conveyance or transfer is made shall succeed to and be substituted for, and may exercise every right and power of, the Company under this Second Ranking Senior Debt Securities Indenture with the same effect as if such successor corporation had been named as the Company.

Section 8.03. *Assumption of Obligations.* Subject to the prior consent of the European Central Bank, if required, any direct or indirect subsidiary of the Company may assume the obligations of the Company (a "successor entity") under the Second Ranking Senior Debt Securities of any series without the consent of the Holders of such series, *provided that:*

(a) the successor entity shall expressly assume such obligations by an amendment to this Second Ranking Senior Debt Securities Indenture, executed by the Company and such successor entity, if applicable, and delivered to the Trustee, in form satisfactory to the Trustee and the Company shall, by amendment to this Second Ranking Senior Debt Securities Indenture, unconditionally guarantee all of the obligations of such successor entity under the Second Ranking Senior Debt Securities of such series and this Second Ranking Senior Debt Securities Indenture as so modified by such amendment;

(b) immediately after giving effect to such assumption of obligations, no Event of Default and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and

(c) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such assumption complies with this Article and that all conditions precedent herein provided for relating to such assumption have been complied with.



Upon any such assumption, the successor entity shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Second Ranking Senior Debt Securities Indenture with respect to any such Second Ranking Senior Debt Securities with the same effect as if such successor entity had been named as the Company in this Second Ranking Senior Debt Securities Indenture, and the Company or any legal and valid successor corporation which shall theretofore have become such in the manner prescribed herein, shall be released from all liability as obligor upon any such Second Ranking Senior Debt Securities except as described in the following paragraph.

In the event of any assumption, Additional Amounts under the Second Ranking Senior Debt Securities will be payable in respect of taxes imposed by the assuming corporation's jurisdiction of incorporation or tax residence (subject to exceptions equivalent to those that apply to the obligation to pay Additional Amounts pursuant to Section 10.04 in respect of taxes imposed by the laws of the Kingdom of Spain) on payments of interest or principal made on or subsequent to the date of such assumption. Additional Amounts with respect to payments of interest or principal due prior to the date of such assumption will be payable only in respect of taxes imposed by the Kingdom of Spain. The direct or indirect subsidiary thereof that assumes the obligations of the Company in such cases will also be entitled to redeem the Securities in the circumstances described in Section 11.08 with respect to any change or amendment to, or change in the application or official interpretation of the laws or regulations of such jurisdiction, which change or amendment must occur subsequent to the date of any such assumption if the assuming entity is not incorporated or tax resident in the Kingdom of Spain. In the event of any such assumption, all obligations of the Company under the Securities shall immediately be discharged.

Section 8.04. *Substitution and Variation.* If a TLAC/MREL Disqualification Event, an event that would entitle the Company to redeem the Second Ranking Senior Debt Securities of any series as set forth in Section 11.08 or an Alignment Event occurs and is continuing, the Company may substitute all (but not some) of the Second Ranking Senior Debt Securities of any series or modify the terms of all (but not some) of the Second Ranking Senior Debt Securities of such series, without any requirement for the consent or approval of the holders of the Second Ranking Senior Debt Securities of such series, so that they are substituted for, or varied to, become, or remain, Qualifying Notes, subject to having given not less than 30 nor more than 60 days' notice to the Holders of such series in accordance with Section 1.06 and to the Trustee (which notice shall be irrevocable and shall specify the date for substitution or, as applicable, variation), and subject to obtaining supervisory permission therefor as required under Applicable TLAC/MREL Regulations, if required.

Any such notice shall specify the relevant details of the manner in which such substitution or variation shall take effect and where the Holders of such series can inspect or obtain copies of the new terms and conditions of the Second Ranking Senior Debt Securities of such series. Such substitution or variation will be effected without any cost or charge to such Holders.



The Second Ranking Senior Debt Securities of any series shall cease to bear interest from (an including) the date of substitution thereof.

Any Holder or beneficial owner of the Second Ranking Senior Debt Securities of any series shall, by virtue of its acquisition of the Second Ranking Senior Debt Securities of any series or any beneficial interest therein, be deemed to accept the substitution or variation of the terms of the Second Ranking Senior Debt Securities of such series as set forth in this Section 8.04 and to grant to the Company full power and authority to take any action and/or to execute and deliver any document in the name and/or on behalf of such Holder which is necessary or convenient to complete the substitution or variation of the terms of the Second Ranking Senior Debt Securities of such series, as applicable.

ARTICLE 9  
SUPPLEMENTAL INDENTURES

Section 9.01. *Supplemental Indentures without Consent of Holders.* Without the consent of any Holders, the Company, when authorized by a Board Resolution of the Company and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

- (a) to evidence the succession of another corporation to the Company and the assumption by any such successor of the covenants of the Company herein and in the Second Ranking Senior Debt Securities;
- (b) to add to the covenants of the Company for the benefit of the Holders of all or any series of Second Ranking Senior Debt Securities (and, if such covenants are to be for the benefit of fewer than all series of Second Ranking Senior Debt Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Company;
- (c) to add any additional Events of Default;
- (d) to change or eliminate any of the provisions of this Second Ranking Senior Debt Securities Indenture, or any supplemental indenture, provided that any such change or elimination shall become effective only when there is no outstanding Second Ranking Senior Debt Security of any series created prior to the execution of such supplemental indenture that is entitled to the benefit of such provision or as to which such supplemental indenture would apply;
- (e) to secure the Second Ranking Senior Debt Securities;
- (f) to establish the form or terms of Second Ranking Senior Debt Securities of any series as permitted by Section 2.01 or 3.01;
- (g) to change any Place of Payment, so long as the Place of Payment as required by Section 3.01 is maintained in The City of New York;



(h) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein or in any supplemental indenture;

(i) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Second Ranking Senior Debt Securities of one or more series and to add to or change any of the provisions of this Second Ranking Senior Debt Securities Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.12(b);

(j) to change or eliminate any provision of this Second Ranking Senior Debt Securities Indenture as permitted by Section 1.08;

(k) to name a Trustee for a particular series of Second Ranking Senior Debt Securities other than the Trustee named in the first paragraph of this Second Ranking Senior Debt Securities Indenture and to provide for the appropriate changes related to such appointment for a particular series of Second Ranking Senior Debt Securities; or

(l) with respect to any Second Ranking Senior Debt Security (including a Global Security) issued on or after the date hereof, to amend any such Second Ranking Senior Debt Security to conform to the description of the terms of such Second Ranking Senior Debt Security in the prospectus, prospectus supplement, product supplement, pricing supplement or any other similar offering document related to the offering of such Second Ranking Senior Debt Security.

Section 9.02. *Supplemental Indentures with Consent of Holders.* With the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Second Ranking Senior Debt Securities of each series affected by such supplemental Second Ranking Senior Debt Securities Indenture (voting as a class), by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Second Ranking Senior Debt Securities Indenture or of modifying in any manner the rights of the Holders of Second Ranking Senior Debt Securities of such series under this Second Ranking Senior Debt Securities Indenture; provided, however, that no such supplemental indenture may, without the consent of the Holder of each Outstanding Second Ranking Senior Debt Security affected thereby,

(a) change the Stated Maturity, if any, of any principal amount or any interest amounts in respect of any such Second Ranking Senior Debt Security, reduce the principal amount thereof or the rate of interest and Additional Amounts, if any, thereon, or any premium payable upon the redemption thereof, or reduce the amount of principal of an Original Issue Discount Security that would be due and payable upon an acceleration of the Maturity thereof pursuant to Section 5.02, or change the obligation of the Company (or its successor) to pay Additional Amounts pursuant to Section 10.04





(except as contemplated by Section 8.01(a) and permitted by Section 9.01(a)) on the Second Ranking Senior Debt Securities, or the currency of payment of the principal amount of, premium, if any, or interest on, any such Second Ranking Senior Debt Security, or change the Place of Payment, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof or the date any such payment is otherwise due and payable (or, in the case of redemption, on or after the Redemption Date); or

(b) reduce the percentage in aggregate principal amount of the Outstanding Second Ranking Senior Debt Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Second Ranking Senior Debt Securities Indenture or of certain defaults hereunder and their consequences) provided for in this Second Ranking Senior Debt Securities Indenture; or

(c) modify any of the provisions of this Section 9.02 or Section 5.13 except to increase any such percentage or to provide that certain other provisions of this Second Ranking Senior Debt Securities Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Second Ranking Senior Debt Security affected thereby; provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to the “Trustee” and concomitant changes in this Section, or the deletion of this proviso, in accordance with the requirements of Sections 6.12(b) and 9.01(j); or

(d) change in any manner adverse to the interests of the Holders of any Second Ranking Senior Debt Securities or the terms and conditions of the obligations of the Company in respect of the due and punctual payment of any amounts due and payable on the Second Ranking Senior Debt Securities.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

A supplemental indenture which changes or eliminates any covenant or other provision of this Second Ranking Senior Debt Securities Indenture which has expressly been included solely for the benefit of one or more particular series of Second Ranking Senior Debt Securities, or which modifies the rights of the Holders of Second Ranking Senior Debt Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Second Ranking Senior Debt Securities Indenture of the Holders of Second Ranking Senior Debt Securities of any other series.

Section 9.03. *Execution of Supplemental Indentures.* In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Second Ranking Senior Debt Securities Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.01) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Second Ranking Senior



200FX&=8eN2okqKs4

Debt Securities Indenture and that such supplemental indenture constitutes a valid and binding obligation of the Company subject to customary exceptions. The Trustee may, but shall not be obliged to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Second Ranking Senior Debt Securities Indenture or otherwise.

Section 9.04. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture under this Article, this Second Ranking Senior Debt Securities Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Second Ranking Senior Debt Securities Indenture for all purposes; and every Holder of Second Ranking Senior Debt Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby, except as otherwise expressed therein.

Section 9.05. *Conformity with Trust Indenture Act.* Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

Section 9.06. *Reference in Second Ranking Senior Debt Securities to Supplemental Indentures.* Second Ranking Senior Debt Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Second Ranking Senior Debt Securities of any series so modified as to conform, in the opinion of the Trustee, the Company, to any such supplemental indenture may be prepared and executed by the Company and such Second Ranking Senior Debt Securities may be authenticated and delivered by the Trustee in exchange for Outstanding Second Ranking Senior Debt Securities of such series.

ARTICLE 10  
COVENANTS

Section 10.01. *Payment of Principal, Premium, and Interest.* The Company covenants and agrees for the benefit of each series of Second Ranking Senior Debt Securities that it will (subject to Section 3.07 and to the ranking provisions in Article 12 and to Section 13.02) duly and punctually pay to the Holders the principal of (and premium, if any) and interest, if any, and Additional Amounts on the Second Ranking Senior Debt Securities of that series in accordance with the terms of the Second Ranking Senior Debt Securities and this Second Ranking Senior Debt Securities Indenture. Except as otherwise specified, as contemplated by Section 3.01 hereof, the Trustee shall act as Paying Agent with respect to any series of Second Ranking Senior Debt Securities.

Section 10.02. *Maintenance of Office or Agency.* The Company will maintain in each Place of Payment for any series of Second Ranking Senior Debt Securities an office or agency where Second Ranking Senior Debt Securities of that series may be presented or surrendered for payment, where Second Ranking Senior Debt Securities of that series may be surrendered for registration of transfer or exchange and where notices and



demands to or upon the Company in respect of the Second Ranking Senior Debt Securities of that series and this Second Ranking Senior Debt Securities Indenture may be served; provided, however, that at the option of the Company in the case of definitive Second Ranking Senior Debt Securities of such series, payment of any interest thereon may be made by check mailed to the address of the Person entitled herein as such address shall appear in the Second Ranking Senior Debt Security Register. With respect to the Second Ranking Senior Debt Securities of any series, such office or agency in each Place of Payment shall be specified as contemplated by Section 3.01, and if not so specified, initially shall be 225 Liberty Street, New York, New York, 10286. Unless otherwise specified pursuant to Section 3.01, the Company will maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands to or upon the Company in respect of Second Ranking Senior Debt Securities of any series and this Second Ranking Senior Debt Securities Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee. The Company hereby appoints the Trustee as its agent to receive all presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies (in or outside the Borough of Manhattan, The City of New York) where the Second Ranking Senior Debt Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of any obligation to maintain an office or agency in each Place of Payment (except as otherwise indicated in this Section) for Second Ranking Senior Debt Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 10.03. *Money for Payments to be Held in Trust.* If the Company shall at any time act as Paying Agent with respect to the Second Ranking Senior Debt Securities of any series, it will, on or before each due date for payment of the principal of (and premium, if any) or interest, if any, on any of the Second Ranking Senior Debt Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest, if any, so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Second Ranking Senior Debt Securities, it will, prior to each due date for payment of the principal of (and premium, if any) or interest, if any, on any Second Ranking Senior Debt Securities of that series deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest, if any, so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its



action or its failure so to act. Unless otherwise specified as contemplated by Section 3.01, the Trustee shall be the Company's Paying Agent. The Company will cause each Paying Agent for any series of Second Ranking Senior Debt Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(a) hold all sums held by it for the payment of the principal of (and premium, if any) or interest, if any, on Second Ranking Senior Debt Securities of that series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(b) give the Trustee notice of any default by the Company (or any other obligor upon the Second Ranking Senior Debt Securities of that series) in the making of any payment, when due and payable, or principal of (and premium, if any) or interest, if any, on Second Ranking Senior Debt Securities of that series; and

(c) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at the time, for the purpose of obtaining the satisfaction and discharge of this Second Ranking Senior Debt Securities Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (and premium, if any) or interest, if any, on any Second Ranking Senior Debt Security of any series and remaining unclaimed for two years after such principal (and premium, if any) or interest, if any, have become due and payable shall be paid to the Company, on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Second Ranking Senior Debt Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published at least once, in an Authorized Newspaper, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be paid to the Company.

Section 10.04. *Additional Amounts.* Unless otherwise specified pursuant to Section 3.01, all amounts payable (whether in respect of principal, redemption amount, interest or otherwise) in respect of any series of Second Ranking Senior Debt Securities



200FX&=eNJH=PwL<

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 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, unless the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law. In that event, the Company shall pay such additional amounts (“**Additional Amounts**”) as will result in receipt by the Holders of the Second Ranking Senior Debt Securities of the particular series of such amounts as would have been received by them had no such withholding or deduction been required.

The Company shall not be required to pay any Additional Amounts in respect of any series of Second Ranking Senior Debt Securities:

(i) to, or to a third party on behalf of, a Holder if the Holder or the beneficial owner of Second Ranking Senior Debt Securities is liable for such taxes, duties, assessments or governmental charges in respect of such Second Ranking Senior Debt Securities by reason of his having some connection with Spain other than the mere holding of a Second Ranking Senior Debt Security; or

(ii) to, or to a third party on behalf of, a Holder in respect of whose series of Second Ranking Senior Debt Securities the Company does not receive such information as may be required in order to comply with the applicable Spanish tax reporting obligations, including but not limited to the receipt in a timely manner of a duly executed and completed certificate in accordance with Law 10/2014 and Royal Decree 1065/2007, as amended, and any implementing legislation or regulation; or

(iii) to, or to a third party on behalf of, a Holder of Second Ranking Senior Debt Securities of any series if the Holder or beneficial owner fails to make any necessary claim or to comply with any certification, identification or other requirements concerning the nationality, residence, identity or connection with the taxing jurisdiction of such Holder or beneficial owner, if such claim or compliance is required by statute, treaty, regulation or administrative practice of Spain as a condition to relief or exemption from such taxes; or

(iv) presented for payment (where presentation is required) more than 30 days after the Relevant Date, except to the extent that the relevant Holder would have been entitled to such Additional Amounts on presenting the same for payment on the expiry of such period of 30 days; or

(v) in relation to any estate, inheritance, gift, sales, transfer or similar taxes; or

(vi) to, or to a third party on behalf of, individuals resident for tax purposes in the Kingdom of Spain; or



(vii) to, or to a third party on behalf of, a Spanish-resident legal entity subject to Spanish corporation tax if the Spanish tax authorities determine that the Second Ranking Senior Debt Securities of such series do not comply with exemption requirements specified in the Reply to a Consultation of the Directorate General for Taxation (*Dirección General de Tributos*) dated 27 July 2004 and require a withholding to be made; or

(viii) where the withholding or deduction is required pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to Sections 1471 through 1474 of the Code (“FATCA”), any regulations or agreements thereunder, any official interpretations thereof, any intergovernmental agreements with respect thereto (including the intergovernmental agreement between the United States and Spain on the implementation of FATCA), or any law implementing an intergovernmental agreement or any regulations or official interpretations relating thereto; or

(ix) in the case of any combination of items listed in (i) through (viii) above.

Additional Amounts will also not be paid with respect to any payment to a Holder who is a fiduciary, a partnership, a limited liability company or person other than the sole beneficial owner of that payment, to the extent that payment would be required by the laws of Spain (or any political subdivision thereof) to be included in the income, for tax purposes, of a beneficiary or settlor with respect to the fiduciary, a member of that partnership, an interest holder in that limited liability company or a beneficial owner who would not have been entitled to the Additional Amounts had it been the Holder.

For the purposes of (iv) above, the “Relevant Date” means, in respect of any payment, the date on which such payment first becomes due and payable, but if the full amount of the moneys payable has not been received by the Trustee on or prior to such due date, it means the first date on which, the full amount of such moneys having been so received and being available for payment to Holders of Second Ranking Senior Debt Securities, notice to that effect shall have been duly given to the Holders of the relevant series of Second Ranking Senior Debt Securities in accordance with Section 1.06.

Unless the context otherwise requires, any reference in this Section 10.04 to “principal” shall include any premium payable, or Redemption Amount and any other amounts in the nature of principal payable pursuant to this Second Ranking Senior Debt Securities Indenture and “interest” shall include all amounts payable pursuant to Section 3.07 and any other amounts in the nature of interest payable under this Second Ranking Senior Debt Securities Indenture.

As used in this Section 10.04, the term “Redemption Amount” means, as appropriate, the Maturity Redemption Amount, Early Redemption Amount (Tax), Early



Redemption Amount (TLAC/MREL Disqualification Event), Early Redemption Amount (Call) and Early Termination Amount or such other amount in the nature of a redemption amount as may be specified in, or determined in accordance with the Section 3.01.

Unless the context requires otherwise, any references in this Second Ranking Senior Debt Securities Indenture to payment of principal of or interest on a Second Ranking Senior Debt Security shall be deemed to include any Additional Amounts payable with respect thereto.

In the event that any withholding or deduction for or on account of any taxes is required, at least 10 days prior to each date of payment of principal of or interest on the relevant series of Second Ranking Senior Debt Securities, or, if later, promptly after the obligation to withhold or deduct becomes known to the Company, the Company will furnish to the Trustee and the Paying Agent, if other than the Trustee, an Officer's Certificate specifying the amount required to be withheld or deducted on such payments to such Holders, certifying that the Company shall pay such amounts required to be withheld to the appropriate taxing jurisdiction and certifying to the fact that the Additional Amounts will be payable and the amounts so payable to each Holder, and that the Company will pay to the Trustee or the Paying Agent the Additional Amounts required to be paid; provided that no such Officer's Certificate will be required prior to any date of payment of principal of or interest on such Second Ranking Senior Debt Securities if there has been no change with respect to the matters set forth in a prior Officer's Certificate. The Trustee and Paying Agent may rely on the fact that any Officer's Certificate contemplated by this paragraph has not been furnished as evidence of the fact that no withholding or deduction for or on account of any taxes is required. The Company covenants to indemnify the Trustee and Paying Agent for and to hold them harmless against any loss, liability or expense reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any such Officer's Certificate furnished pursuant to this paragraph or on the fact that any Officer's Certificate contemplated by this paragraph has not been furnished.

Section 10.05. *Corporate Existence.* Subject to Article 8, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its respective corporate existence, *provided*, however, that the foregoing shall not obligate the Company to preserve any such right or franchise if the Company shall determine that the preservation thereof is no longer desirable in the conduct of its business and that the loss thereof is not disadvantageous in any material respect to any Holder.

Section 10.06. *Statement as to Compliance.* The Company will deliver to the Trustee, within 120 days after the end of each fiscal year, a certificate in compliance with Section 314(a)(4) of the Trust Indenture Act.

Section 10.07. *Original Issue Document.* The Company shall provide to the Trustee on a timely basis such information, if any, as the Trustee requires to enable the Trustee to prepare and file any form required to be submitted by the Company with the Internal Revenue Service and the Holders of the Second Ranking Senior Debt Securities relating to any original issue discount, including, without limitation, Form 8821, Form 1099-OID or any successor forms.



ARTICLE 11  
REDEMPTION OF SECOND RANKING SENIOR DEBT SECURITIES

Section 11.01. *Applicability of Article.* Second Ranking Senior Debt Securities of any series shall be redeemable in accordance with their terms and (except as otherwise specified pursuant to Section 3.01 for Second Ranking Senior Debt Securities of any series) in accordance with this Article 11. Second Ranking Senior Debt Securities of any series may not be redeemed except in accordance with provisions of applicable law. The Second Ranking Senior Debt Securities of any series may not be redeemed in whole or in part at the option of the Holder thereof.

Section 11.02. *Election to Redeem; Notice to Trustee.* The election of the Company to redeem any Second Ranking Senior Debt Securities shall be evidenced by a Board Resolution. Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Second Ranking Senior Debt Securities, the Company shall, at least 30 days prior, but not more than 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date, of the principal amount of Second Ranking Senior Debt Securities of such series to be redeemed and, if applicable, the tenor of the Second Ranking Senior Debt Securities to be redeemed. In the case of any redemption of Second Ranking Senior Debt Securities of any series prior to the expiration of any provision restricting such redemption provided in the terms of such Second Ranking Senior Debt Securities or elsewhere in this Second Ranking Senior Debt Securities Indenture, the Company shall furnish the Trustee with respect to such Second Ranking Senior Debt Securities with an Officer's Certificate evidencing compliance with or waiver of such provision.

Section 11.03. *Selection by Trustee of Second Ranking Senior Debt Securities to Be Redeemed.* Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Second Ranking Senior Debt Securities, if fewer than all the Second Ranking Senior Debt Securities of any series are to be redeemed, the particular Second Ranking Senior Debt Securities to be redeemed shall be selected not less than 30 days nor more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Second Ranking Senior Debt Securities of such series not previously called for redemption, pro rata, by lot or by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Second Ranking Senior Debt Securities of that series or any multiple thereof) of the principal amount of Second Ranking Senior Debt Securities of such series of a denomination larger than the minimum authorized denomination for Second Ranking Senior Debt Securities of that series.

The Trustee shall promptly notify the Company in writing of the Second Ranking Senior Debt Securities selected for redemption and, in the case of any Second Ranking Senior Debt Securities selected for partial redemption, the principal amount thereof to be redeemed.





For all purposes of this Second Ranking Senior Debt Securities Indenture, unless the context otherwise requires, all provisions relating to the redemption of Second Ranking Senior Debt Securities shall relate in the case of any Second Ranking Senior Debt Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Second Ranking Senior Debt Security which has been or is to be redeemed.

Section 11.04. *Notice of Redemption.* Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Second Ranking Senior Debt Securities, notice of redemption shall be given not less than 30 days nor more than 60 days prior to the Redemption Date to each Holder of Second Ranking Senior Debt Securities to be redeemed in the manner and to the extent provided in Section 1.06.

All notices of redemption shall state:

- (a) the series of Second Ranking Senior Debt Securities subject to redemption,
- (b) the Redemption Date,
- (c) the Redemption Price,

(d) if fewer than all the Outstanding Second Ranking Senior Debt Securities of any series are to be redeemed, the principal amount of the Second Ranking Senior Debt Securities to be redeemed, (except in the case of a redemption pursuant to Section 11.08 or 11.09, which must be a redemption in full),

(e) that on the Redemption Date the Redemption Price together with any accrued but unpaid interest will become due and payable upon each such Second Ranking Senior Debt Security to be redeemed and, if applicable, that interest thereon will cease to accrue on or after the said date,

(f) the place or places where such Second Ranking Senior Debt Securities are to be surrendered for payment of the Redemption Price, and

(g) the CUSIP, Common Code and/or ISIN number or numbers, if any, with respect to such Second Ranking Senior Debt Securities.

Any notice provided pursuant to this Section 11.04 shall be irrevocable, and the delivery thereof shall oblige the Company to make the redemption therein specified (unless the Bail-in Power is exercised by the Relevant Resolution Authority before the occurrence of such redemption).

Notice of redemption of Second Ranking Senior Debt Securities to be redeemed at the selection of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company, and the Company



shall deliver an Officer's Certificate requesting that the Trustee give such and setting forth the information to be stated in such notice no less than 10 Business Days prior to the date of the notice to Holders of Second Ranking Senior Debt Securities (unless a shorter notice shall be satisfactory to the Trustee).

Section 11.05. *Deposit of Redemption Price.* On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as Paying Agent, segregate and hold in trust as provided in Section 10.03) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued but unpaid interest on, all the Second Ranking Senior Debt Securities which are to be redeemed on that date.

Section 11.06. *Second Ranking Senior Debt Securities Payable on Redemption Date.* Notice of redemption having been given as aforesaid, the Second Ranking Senior Debt Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest, if any) such Second Ranking Senior Debt Securities shall cease to accrue interest. Upon surrender of any such Second Ranking Senior Debt Security for redemption in accordance with said notice, such Second Ranking Senior Debt Security shall be paid by the Company at the Redemption Price, together with accrued but unpaid interest to the Redemption Date; provided, however, that with respect to any Second Ranking Senior Debt Securities, unless otherwise specified as contemplated by Section 3.01, a payment of interest which is payable on an Interest Payment Date which is the Redemption Date, shall be payable to the Holders of such Second Ranking Senior Debt Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Regular or Special Record Date according to the terms of the Second Ranking Senior Debt Securities and the provisions of Section 3.07. Second Ranking Senior Debt Securities in definitive form shall be presented for redemption to the Paying Agent.

If any Second Ranking Senior Debt Security called for redemption shall not be so paid upon surrender thereof for redemption, the Second Ranking Senior Debt Security shall, until paid, continue to accrue interest from and after the Redemption Date in accordance with its terms and the provisions of Section 3.07.

Section 11.07. *Second Ranking Senior Debt Securities Redeemed in Part.* Any Second Ranking Senior Debt Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Second Ranking Senior Debt Security without service charge, a new Second Ranking Senior Debt Security or Second Ranking Senior Debt Securities of the same series of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Second Ranking Senior Debt Security so surrendered. If a Global Security is surrendered, the new Second Ranking Senior Debt Security will also be a Global Security.



Section 11.08. *Optional Redemption Due to Changes in Tax Treatment.* Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Second Ranking Senior Debt Securities, if, in relation to the Second Ranking Senior Debt Securities of any series, (i) as a result of any change in the laws or regulations of Spain or of any political subdivision thereof or any authority or agency therein or thereof having power to tax or in the interpretation or administration of any such laws or regulations which becomes effective on or after the date of issue of the first issued Second Ranking Senior Debt Securities of such series or any earlier date specified pursuant to Section 3.01, the Company shall determine that (a) the Company would be required to pay Additional Amounts pursuant to Section 10.04 or (b) the Company would not be entitled to claim a deduction in computing tax liabilities in Spain in respect of any interest to be paid on the next interest payment date on such series of Second Ranking Senior Debt Securities or the value of such deduction to the Company would be materially reduced or (c) the applicable tax treatment of the Second Ranking Senior Debt Securities of such series changes in a material way that was not reasonably foreseeable at the issuer date and (ii) such circumstances are evidenced by the delivery by the Company to the Trustee of a certificate signed by two directors of the Company stating that such circumstances prevail and describing the facts leading thereto, an opinion of independent legal advisers of recognized standing to the effect that such circumstances prevail and a copy of the Supervisory Permission for the redemption, if required, the Company may, at its option and having given no less than 30 nor more than 60 days' notice (ending, in the case of Second Ranking Senior Debt Securities which bear interest at a floating rate, on a day upon which interest is payable) to the Holders of the Second Ranking Senior Debt Securities of such series in accordance with Section 11.04 (which notice shall be irrevocable), redeem in whole, but not in part, the outstanding Second Ranking Senior Debt Securities of such series (in accordance with the requirements of Applicable Banking Regulations in force at the relevant time) at their early tax redemption amount (the "Early Redemption Amount (Tax)") (which shall be their principal amount or at such other Early Redemption Amount (Tax) as may be specified in or determined pursuant to Section 3.01), together with any accrued interest thereon to (but excluding) the date fixed for redemption; provided, however, that (i) in the case of (a) above, no such notice of redemption may be given earlier than 90 days (or, in the case of Second Ranking Senior Debt Securities which bear interest at a floating rate a number of days which is equal to the aggregate of the number of days falling within the then current interest period applicable to the Second Ranking Senior Debt Securities of such series plus 60 days) prior to the earliest date on which the Company would be obliged to pay such Additional Amounts were a payment in respect of the Second Ranking Senior Debt Securities of such series then due and (ii) redemption for taxation reasons pursuant to this Section 11.08 may only take place in accordance with Applicable Banking Regulations in force at the relevant time and is subject to the Company obtaining prior Supervisory Permission therefor, if required.

Section 11.09. *Optional Redemption For TLAC/MREL Disqualification Event.*

Unless otherwise provided as contemplated by Section 3.01 with respect to any



series of Second Ranking Senior Debt Securities if, in relation to the Second Ranking Senior Debt Securities of any series, following the TLAC/MREL Requirement Date, a TLAC/MREL Disqualification Event has occurred and is continuing and such circumstances are evidenced by the delivery by the Company to the Trustee of a certificate signed by two directors of the Company stating that such circumstances prevail and describing the facts leading thereto, an opinion of independent legal advisers of recognized standing to the effect that such circumstances prevail and a copy of the Supervisory Permission for the redemption, if required, then the Company may, subject to being permitted by Applicable TLAC/MREL Regulations and having given not less than 30 nor more than 60 days' notice (ending, in the case of Second Ranking Senior Debt Securities which bear interest at a floating rate, on a day upon which interest is payable) to the Holders of the Second Ranking Senior Debt Securities of such series in accordance with Section 11.04 below (which notice shall be irrevocable), redeem in whole but not in part the outstanding Second Ranking Senior Debt Securities of such series at their principal amount, together with any accrued and unpaid interest thereon to (but excluding) the date fixed for redemption ("Early Redemption Amount (TLAC/MREL Disqualification Event)").

Redemption on the basis of a TLAC/MREL Disqualification Event is subject to the Company obtaining prior Supervisory Permission therefor, if required, and may only take place in accordance with TLAC/MREL Regulations in force at the relevant time.

Section 11.10. *Optional Early Redemption (Call)*. Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Second Ranking Senior Debt Securities, the Company may, at the date or dates specified as contemplated by Section 3.01 with respect to such series, upon the expiration of the appropriate notice pursuant to Section 11.04, and subject, to the prior Supervisory Permission, if required, redeem in whole (but not, except as otherwise specified pursuant to Section 3.01, in part) the Second Ranking Senior Debt Securities of such series at their call early redemption amount (the "Early Redemption Amount (Call)") (which shall be their principal amount or such other Early Redemption Amount (Call) as may be specified in or determined pursuant to Section 3.01), together with any accrued interest thereon to (but excluding) the date fixed for redemption.

Redemption at the option of the Company pursuant to this Section 11.10 may only take place in accordance with Applicable TLAC/MREL Regulations subject to the Company obtaining prior Supervisory Permission thereof as required under Applicable TLAC/MREL Regulations, if required.

If the Second Ranking Senior Debt Securities of any series are to be redeemed in part only on any date in accordance with this Section 11.10, the Second Ranking Senior Debt Securities of such series shall be redeemed (so far as may be practicable) pro rata to their principal amounts, or by lot or such other method as the Trustee deems fair and appropriate, subject always as aforesaid and provided always that the amount redeemed in respect of the Second Ranking Senior Debt Securities of such series shall be equal to the minimum authorized denomination thereof or an integral multiple thereof, subject always to compliance with all applicable laws and the requirements of any clearing



system on which the Second Ranking Senior Debt Securities of any such series may be cleared and of any listing authority, stock exchange and/or quotation system on which the Second Ranking Senior Debt Securities of such series may be listed and/or quoted.

Section 11.11. *Repurchase of Second Ranking Senior Debt Securities.* Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Second Ranking Senior Debt Securities, the Company and any of its subsidiaries or any third party designated by any of them, may, in accordance with Applicable TLAC/MREL Regulations and subject to the Company obtaining prior Supervisory Permission thereof, if required, at any time repurchase Second Ranking Senior Debt Securities of any series in the open market or otherwise and at any price.

**ARTICLE 12**  
**RANKING OF SECOND RANKING SENIOR DEBT SECURITIES**

Section 12.01. *Ranking of Second Ranking Senior Debt Securities.* The Company, for itself, its successors and assigns, covenants and agrees, and each Holder of the Second Ranking Senior Debt Securities of any series by his acceptance thereof, likewise covenants and agrees, that the payment obligations of the Company under the Second Ranking Senior Debt Securities of such series on account of principal constitute direct, unconditional, unsubordinated and unsecured obligations (*créditos ordinarios*) of the Company and, upon the insolvency of the Company (and unless they qualify as subordinated claims (*créditos subordinados*) pursuant to Article 92.1° or 92.3° to 92.7° of the Spanish Insolvency Law), but subject to any other ranking that may apply as a result of any mandatory provision of law (or otherwise), rank (i) within the senior and unsecured liabilities (*créditos ordinarios*) class of the Company (a) junior to the claims in respect of principal under any Senior Higher Priority Liabilities and (b) *pari passu* with the claims in respect of principal under any Senior Parity Liabilities, and (ii) senior to any present and future subordinated obligations (*créditos subordinados*) of the Company.

Claims for principal in respect of Second Ranking Senior Debt Securities of any series are intended to constitute Statutory Second Ranking Senior Liabilities ranking below Statutory Ordinary Senior Liabilities pursuant to any Senior Ranking Amendment Legislation (to the extent permitted by such Senior Ranking Amendment Legislation) but ahead of claims in respect of present and future subordinated obligations (*créditos subordinados*) of the Company.

If the Senior Ranking Amendment Legislation (if any) makes it a condition for Statutory Second Ranking Senior Liabilities or other instruments comprising the most junior sub-class within the unsubordinated and unsecured liabilities (*créditos ordinarios*) class (such as the Second Ranking Senior Debt Securities), upon the insolvency (*concurso*) of the Company, to rank below the obligations under any Statutory Ordinary Senior Liabilities or the rest of unsubordinated and unsecured liabilities (*créditos ordinarios*) (such as those under all Senior Higher Priority Liabilities), that the relevant contractual documentation in respect of Statutory Second Ranking Senior Liabilities or other instruments comprising the most junior sub-class within the unsubordinated and unsecured liabilities (*créditos ordinarios*) class, explicitly refers to their ranking relative



to the Statutory Ordinary Senior Liabilities or the rest of unsubordinated and unsecured liabilities (*créditos ordinarios*), the Holders (by virtue of their subscription and/or purchase and holding of the Second Ranking Senior Debt Securities of any series) will be deemed to have irrevocably accepted the status of the Second Ranking Senior Debt Securities described above for the purpose of the Senior Ranking Amendment Legislation.

Claims of Holders of Second Ranking Senior Debt Securities of any series in respect of interest accrued but unpaid as of the commencement of any insolvency procedure in respect of the Company shall constitute subordinated claims (*créditos subordinados*) against the Company ranking in accordance with the provisions of Article 92.3° of the Spanish Insolvency Law and no further interest shall accrue from the date of the declaration of insolvency of the Company.

The provisions of this Article 12 shall apply only to rights or claims payable under any Second Ranking Senior Debt Securities of any series and nothing herein shall affect or prejudice the payment of the costs, charges, expenses, liabilities, indemnity or remuneration of the Trustee, the first lien rights of the Trustee under Section 6.08 hereof, or the rights and remedies of the Trustee in respect thereof.

The Company agrees with respect to any series of Second Ranking Senior Debt Securities and each Holder of Second Ranking Senior Debt Securities of any series, by his or her acquisition of a Second Ranking Senior Debt Security will be deemed to have agreed to the ranking as described in this Section 12.01. Each such Holder will be deemed to have irrevocably waived his or her rights of priority which would otherwise be accorded to him or her under the laws of Spain, to the extent necessary to effectuate the ranking provisions of the Second Ranking Senior Debt Security. In addition, each Holder of Second Ranking Senior Debt Securities of any series by his or her acquisition of such Second Ranking Senior Debt Securities authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to effectuate the ranking of such Second Ranking Senior Debt Securities as provided in this Second Ranking Senior Debt Securities Indenture and appoints the Trustee his or her attorney-in-fact for any and all such purposes.

Section 12.02. *Intentionally Omitted*

Section 12.03. *Provisions Solely to Define Relative Rights.* The provisions of this Article 12 are and are intended solely for the purpose of defining the relative rights of the Holders of the Second Ranking Senior Debt Securities of each series on the one hand and the creditors of the Senior Higher Priority Liabilities on the other hand. Nothing contained in this Article or elsewhere in this Second Ranking Senior Debt Securities Indenture or in such Second Ranking Senior Debt Securities is intended to or shall (a) impair, as among the Company and the Holders of the Second Ranking Senior Debt Securities, the obligation of the Company, which is absolute and unconditional, to pay to the holders of such claims the principal of, premium, if any, and interest, if any, on such Second Ranking Senior Debt Securities as and when the same shall become due and payable in accordance with their terms and the terms of this Second Ranking Senior Debt



Securities Indenture; or (b) affect the relative rights against the Company of the Holders of such Second Ranking Senior Debt Securities; or (c) prevent the Trustee or the Holder of any Second Ranking Senior Debt Securities of the series from exercising all remedies otherwise permitted by applicable law upon default under this Second Ranking Senior Debt Securities Indenture, subject to the rights, if any, under this Article of the creditors of the Senior Higher Priority Liabilities to receive cash, property or securities otherwise payable or deliverable to the Trustee or such holder.

Section 12.04. *Waiver of Right of Set-off.* Subject to applicable law, neither any Holder or beneficial owner of the Second Ranking Senior Debt Securities of any series nor the Trustee acting on behalf of the Holders of the Second Ranking Senior Debt Securities of such series may exercise, claim or plead any right of set-off, compensation or retention in respect of any amount owed to it by the Company in respect of, or arising under, or in connection with, the Second Ranking Senior Debt Securities of such series or this Second Ranking Senior Debt Securities Indenture and each Holder and beneficial owner of the Second Ranking Senior Debt Securities of such series, by virtue of its holding of any Second Ranking Senior Debt Securities of such series or any interest therein, and the Trustee acting on behalf of the Holders of the Second Ranking Senior Debt Securities of such series, shall be deemed to have waived all such rights of set-off, compensation or retention. If, notwithstanding the above, any amounts due and payable to any Holder or beneficial owner of a Second Ranking Senior Debt Security of any series or any interest therein by the Company in respect of, or arising under, the Second Ranking Senior Debt Securities of such series are discharged by set-off, such Holder or beneficial owner shall, subject to applicable law, immediately pay an amount equal to the amount of such discharge to the Company (or, if the event of any voluntary or involuntary liquidation of the Company shall have occurred, the liquidator or administrator of the Company, as the case may be) and, until such time as payment is made, shall hold an amount equal to such amount in trust (where possible) or otherwise for the Company (or the liquidator or administrator of the Company, as the case may be) and, accordingly, any such discharge shall be deemed not to have taken place.

Section 12.05. *Trustee to Effectuate Ranking.* Each Holder of a Second Ranking Senior Debt Security by his acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the ranking of the Second Ranking Senior Debt Securities provided in this Article 12 and appoints the Trustee his attorney-in-fact for any and all such purposes.

Section 12.06. *Trustee Not Fiduciary for Creditors of Senior Higher Priority Liabilities.* With respect to the creditors of Senior Higher Priority Liabilities, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Second Ranking Senior Debt Indenture, and no implied covenants or obligations with respect to the creditors of Senior Higher Priority Liabilities shall be read into this Second Ranking Senior Debt Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the creditors of Senior Higher Priority Liabilities and shall not be liable to any such holders if it shall mistakenly pay over or distribute to Holders of Second Ranking Senior Debt Securities of the series or to the Company or to any other Person cash, property or securities to which any creditors of Senior Higher Priority Liabilities shall be entitled by virtue of this Article or otherwise.



Section 12.07. *Rights of Trustee as Creditor of Senior Higher Priority Liabilities; Preservation of Trustee's Rights.* The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any claims of creditors of Senior Higher Priority Liabilities which may at any time be held by it, to the same extent as any other creditors of Senior Higher Priority Liabilities, and nothing in this Second Ranking Senior Debt Securities Indenture or the Trust Indenture Act shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 5.06 and Section 6.08.

Section 12.08. *Article Applicable to Paying Agents.* At all times when a Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term “**Trustee**” as used in this Article shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; provided, however, that Section 12.07 shall not apply to the Company or any Affiliate of the Company if the Company or such Affiliate acts as Paying Agent.

**ARTICLE 13**  
BAIL-IN AND RESOLUTION ACTIONS

Section 13.01. *Agreement and Acknowledgement with Respect to the Exercise of the Bail-in Power.* (a) Notwithstanding any other term of the Second Ranking Senior Debt Securities of any series or any other agreements, arrangements, or understandings between the Company and any Holder of the Second Ranking Senior Debt Securities of any series, by its acquisition of the Second Ranking Senior Debt Securities of any series, each Holder (which, for the purposes of this clause, includes each holder of a beneficial interest in the Second Ranking Senior Debt Securities of any series) acknowledges, accepts, consents to and agrees to be bound by the exercise of any Bail-in Power (as defined herein) by the Relevant Resolution Authority that may result in the write-down or cancellation of all or a portion of the Amounts Due on the Second Ranking Senior Debt Securities and/or the conversion of all or a portion of the Amounts Due on the Second Ranking Senior Debt Securities into shares or other securities or other obligations of the Company or another person, including by means of a variation to the terms of the Second Ranking Senior Debt Securities to give effect to the exercise by the Relevant Resolution Authority of such Bail-in Power. Each Holder of the Second Ranking Senior Debt Securities of any series further acknowledges and agrees that the rights of the Holders of the Second Ranking Senior Debt Securities of any series are subject to—and will be varied, if necessary, so as to give effect to—the exercise of any Bail-in Power by the Relevant Resolution Authority.





200FX&=8eN2nfN!st

(b) Upon the Company being informed or notified by the Relevant Resolution Authority of the actual exercise of the date from which the Bail-in Power is effective with respect to the Second Ranking Senior Debt Securities of such series, the Company will provide a written notice to the holders of the Second Ranking Senior Debt Securities of such series through DTC without delay regarding such exercise of Bail-in Power. The Company will also deliver a copy of such notice to the Trustee for information purposes. Any delay or failure by the Company to give notice shall not affect the validity and enforceability of the Bail-in Power nor the effects on the Second Ranking Senior Debt Securities described in this clause

(c) No repayment or payment of Amounts Due, if any, on the Second Ranking Senior Securities of any series, will become due and payable or be paid after the exercise of any Bail-in Power by the Relevant Resolution Authority if and to the extent such amounts have been reduced, converted, cancelled, amended or altered as a result of such exercise.

(d) By its acquisition of the Second Ranking Senior Debt Securities of any series, each Holder of the Second Ranking Senior Debt Securities of such series, (which, for the purposes of this clause, includes each holder of a beneficial interest in the Second Ranking Senior Debt Securities of such series), to the extent permitted by the Trust Indenture Act, will waive any and all claims, in law and/or in equity, against the Trustee for, agree not to initiate a suit against the Trustee in respect of, and agree that the Trustee will not be liable for, any action that the Trustee takes, or abstains from taking, in either case in accordance with the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Second Ranking Senior Debt Securities of such series.

(e) Additionally, by its acquisition of the Second Ranking Senior Debt Securities of any series, each Holder of the Second Ranking Senior Debt Securities of such series acknowledges and agrees that, upon the exercise of the Bail-in Power by the Relevant Resolution Authority:

(i) the Trustee will not be required to take any further directions from the Holders of the Second Ranking Senior Debt Securities of such series with respect to any portion of the Second Ranking Senior Debt Securities of such series that are written-down, converted to equity and/or cancelled under this Second Ranking Senior Debt Securities Indenture, which authorizes holders of a majority in aggregate outstanding principal amount of the outstanding Second Ranking Senior Debt Securities of such series to direct certain actions relating to the Second Ranking Senior Debt Securities of such series; and

(ii) the Second Ranking Senior Debt Securities Indenture will not impose any duties upon the Trustee whatsoever with respect to the exercise of the Bail-in Power by the Relevant Resolution Authority;

provided, however, that notwithstanding the exercise of the Bail-in Power by the Relevant Resolution Authority, so long as the Second Ranking Senior Securities of any series remain outstanding, there will at all times be a Trustee for the Second Ranking



200FX&amp;=8eN4fF2pLO

**BANCO SANTANDER, S.A**

Donnelley Financial

VDI-W7-PR3-1049  
12.1.14

ADG ronqa0ma

01-Apr-2017 03:18 EST

**353001 EX4 2 95 6\*****FORM F-3**

NYC

HTM ESS 0C

Page 1 of 1

Senior Debt Securities of such series in accordance with the Second Ranking Senior Debt Securities Indenture, and the resignation and/or removal of the Trustee and the appointment of a successor Trustee will continue to be governed by the Second Ranking Senior Debt Securities Indenture, including to the extent no additional supplemental indenture or amendment is agreed upon in the event the Second Ranking Senior Debt Securities of such series remain outstanding following the completion of the exercise of the Bail-in Power.

(f) By its acquisition of the Second Ranking Senior Debt Securities of any series, each Holder of the Second Ranking Senior Debt Securities of such series acknowledges and agrees that neither a cancellation or deemed cancellation of the principal or interest (in each case, in whole or in part), nor the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Second Ranking Senior Debt Securities of such series will give rise to a default for purposes of Section 315(b) (Notice of Default) and Section 315(c) (Duties of the Trustee in Case of Default) of the Trust Indenture Act.

(g) By purchasing the Second Ranking Senior Debt Securities of any series, each Holder (including each beneficial owner) of the Second Ranking Senior Debt Securities of such series shall be deemed to have authorized, directed and requested DTC and any direct participant in DTC or other intermediary through which it holds the Second Ranking Senior Debt Securities of such series to take any and all necessary action, if required, to implement the exercise of the Bail-in Power with respect to the Second Ranking Senior Debt Securities of such series as it may be imposed, without any further action or direction on the part of such Holder.

(h) Each Holder of the Second Ranking Senior Debt Securities of any series also acknowledges and agrees that the foregoing description of the Bail-in Power and its exercise is exhaustive on the matters described herein to the exclusion of any other agreements, arrangements or understandings relating to the application of any Bail-in Power to the Second Ranking Senior Debt Securities of any series.

(i) Each Holder of the Second Ranking Debt Securities of any series that acquires such Second Ranking Debt Securities in the secondary market (including each beneficial owner) shall be deemed to acknowledge, agree to be bound by and consent to the same provisions specified herein to the same extent as the Holders of the Second Ranking Debt Securities that acquire the Second Ranking Debt Securities upon their initial issuance, including, without limitation, with respect to the acknowledgment and agreement to be bound by and consent to the terms of the Second Ranking Debt Securities, including in relation to the Bail-in-Power.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Second Ranking Senior Debt Securities Indenture and of signature pages by facsimile or electronic format (i.e., "pdf" or "tif") transmission shall constitute effective execution and delivery of this Second Ranking Senior Debt Securities Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes.

[Signature Page Follows]



IN WITNESS WHEREOF, the parties hereto have caused this Second Ranking Senior Debt Securities Indenture to be duly executed, all as of the day and year first above written.

BANCO SANTANDER, S.A.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

THE BANK OF NEW YORK MELLON LONDON  
BRANCH

By: \_\_\_\_\_  
Name:  
Title:



## APPENDIX 1: PROCEDURES FOR COMPLIANCE WITH SPANISH TAX LEGISLATION

### Information Procedures and Certification Obligations of the Trustee or Paying Agent in respect of payments under the Second Ranking Senior Debt Securities

1. *Delivery of the Payment Information Certificate:* In connection with each payment of income under the Second Ranking Senior Debt Securities, the Trustee or Paying Agent shall deliver to the Company by the close of business on the business day immediately preceding the day on which such payment is made a duly completed and executed Payment Information Certificate substantially in the form set forth in Exhibit I hereto (*Form of Payment Information Certificate*). Such form may be delivered initially by email, in pdf form, or by fax, provided that the original is delivered by the end of the following month.

If the Payment Information Certificate is delivered by the Trustee or Paying Agent in a timely manner to the Company, the relevant income payment will be made free and clear of Spanish withholding tax.

The Trustee or Paying Agent shall have no duty or responsibility to comply with Spanish tax laws arising out of this Second Ranking Senior Debt Securities Indenture, and may request and rely conclusively upon any instructions from the Company in respect of any action necessary or required to be taken by the Trustee or Paying Agent pursuant to this Appendix 1; *provided, however, that* in no event shall the Trustee or Paying Agent be required to expend or risk its own funds in the performance of any of its duties pursuant to this Appendix 1, or be obligated to take any legal or other action which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with acceptable indemnification.

The Company agrees to instruct the Trustee or Paying Agent in writing with respect to any certifications that may be required under Spanish law, and the Trustee or Paying Agent acknowledges that this Appendix 1 shall constitute an instruction in this regard, unless otherwise instructed in writing by the Company.

2. *Failure to deliver the Payment Information Certificate:* In the event that the Trustee or Paying Agent fails or for any reason is unable to deliver a timely, duly completed Payment Information Certificate as described above to the Company in respect of a payment of income under the Second Ranking Senior Debt Securities, the Trustee or Paying Agent shall withhold Spanish income tax on behalf of the Company from the relevant payment at the then-applicable rate (currently set at 19%).
3. If, after the relevant payment date but before the 10th day of the month immediately following the relevant payment date the Trustee or Paying Agent provides the duly completed Payment Information Certificate to the Company, then the Company shall instruct the Trustee or Paying Agent to immediately transfer the amounts withheld in respect of the relevant payment pursuant to



200FX&=&eN4f@LJL8

**BANCO SANTANDER, S.A**

Donnelley Financial

ADGP64RS09  
12.1.14

ADG pf\_rend

01-Apr-2017 03:19 EST

**353001 EX4 2 98** 4\*

**FORM F-3**

NYC

HTM ESS 0C

Page 1 of 1

paragraph 1 above by way of reimbursement of the amounts withheld on the relevant payment date and completion of the corresponding income payment in respect of payments under the Second Ranking Senior Debt Securities.

4. If the Trustee or Paying Agent fails or for any reason is unable to submit a duly completed and executed Payment Information Certificate to the Company by the 10th day of the month immediately following the relevant payment date, the Trustee or Paying Agent shall immediately return (but in any event no later than the 10th day of the month immediately following the relevant payment date) to the Company any remaining amount of the 19% tax withheld in respect of the relevant payment, and investors will have to apply directly to the Spanish tax authorities for any refund to which they may be entitled.



EXHIBIT I

**Anexo al Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos, aprobado por Real Decreto 1065/2007**

**Modelo de declaración a que se refieren los apartados 3, 4 y 5 del artículo 44 del Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos**

Annex to Royal Decree 1065/2007, of 27 July, approving the General Regulations of the tax inspection and management procedures and developing the common rules of the procedures to apply taxes

Declaration form referred to in paragraphs 3, 4 and 5 of Article 44 of the General Regulations of the tax inspection and management procedures and developing the common rules of the procedures to apply taxes

**Don (nombre), con número de identificación fiscal ( )<sup>(1)</sup>, en nombre y representación de (entidad declarante), con número de identificación fiscal ( )<sup>(1)</sup> y domicilio en ( ) en calidad de (marcar la letra que proceda):**

Mr. (name), with tax identification number ( )<sup>(1)</sup>, in the name and on behalf of (entity), with tax identification number ( )<sup>(1)</sup> and address in ( ) as (function - mark as applicable):

**(a) Entidad Gestora del Mercado de Deuda Pública en Anotaciones.**

(a) Management Entity of the Public Debt Market in book entry form.

**(b) Entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero.**

(b) Entity that manages the clearing and settlement system of securities resident in a foreign country.

**(c) Otras entidades que mantienen valores por cuenta de terceros en entidades de compensación y liquidación de valores domiciliadas en territorio español.**

(c) Other entities that hold securities on behalf of third parties within clearing and settlement systems domiciled in the Spanish territory.

**(d) Agente de pagos designado por el emisor.**

(d) Fiscal Agent appointed by the issuer.



**Formula la siguiente declaración, de acuerdo con lo que consta en sus propios registros:**

Makes the following statement, according to its own records:

**1. En relación con los apartados 3 y 4 del artículo 44:**

1. In relation to paragraphs 3 and 4 of Article 44:

**1.1 Identificación de los valores**

1.1 Identification of the securities

**1.2 Fecha de pago de los rendimientos (o de reembolso si son valores emitidos al descuento o segregados)**

1.2 Income payment date (or refund if the securities are issued at discount or are segregated)

**1.3 Importe total de los rendimientos (o importe total a reembolsar, en todo caso, si son valores emitidos al descuento o segregados)**

1.3 Total amount of income (or total amount to be refunded, in any case, if the securities are issued at discount or are segregated)

**1.4 Importe de los rendimientos correspondiente a contribuyentes del Impuesto sobre la Renta de las Personas Físicas, excepto cupones segregados y principales segregados en cuyo reembolso intervenga una Entidad Gestora**

1.4 Amount of income corresponding to Personal Income Tax taxpayers, except segregated coupons and segregated principals for which reimbursement an intermediary entity is involved

**1.5 Importe de los rendimientos que conforme al apartado 2 del artículo 44 debe abonarse por su importe íntegro (o importe total a reembolsar si son valores emitidos al descuento o segregados).**

1.5 Amount of income which according to paragraph 2 of Article 44 must be paid gross (or total amount to be refunded if the securities are issued at discount or are segregated).

**2. En relación con el apartado 5 del artículo 44.**

2. In relation to paragraph 5 of Article 44.

**2.1 Identificación de los valores**

2.1 Identification of the securities



200FX&=&eN4f&0%\$s=

**2.2 Fecha de pago de los rendimientos (o de reembolso si son valores emitidos al descuento o segregados)**

2.2 Income payment date (or refund if the securities are issued at discount or are segregated)

**2.3 Importe total de los rendimientos (o importe total a reembolsar si son valores emitidos al descuento o segregados)**

2.3 Total amount of income (or total amount to be refunded if the securities are issued at discount or are segregated)

**2.4 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero A.**

2.4 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country A.

**2.5 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero B.**

2.5 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country B.

**2.6 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero C.**

2.6 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country C.

**Lo que declaro en            a    de            de**

I declare the above in            on the    of            of

**(1) En caso de personas, físicas o jurídicas, no residentes sin establecimiento permanente se hará constar el número o código de identificación que corresponda de conformidad con su país de residencia**

(1) In case of non-residents (individuals or corporations) without permanent establishment in Spain it shall be included the number or identification code which corresponds according to their country of residence.





**Exhibit 4.3**

**BANCO SANTANDER, S.A.**

as Issuer

**TO**

**THE BANK OF NEW YORK MELLON,  
acting through its London Branch**

as Trustee

**INDENTURE**

**Subordinated Debt Securities**



200FX&=eN4isCxL@

**BANCO SANTANDER, S.A.**

Reconciliation and tie between Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, and this Subordinated Debt Securities Indenture, dated as of [●], 2017.

	<u>Trust Indenture Act Section</u>	<u>Subordinated Debt Securities Indenture Section</u>
§310	(a)(1)	6.10
	(a)(2)	6.10
	(a)(3)	Not Applicable
	(a)(4)	Not Applicable
	(b)	6.09Section 6.10 6.11
§311	(a)	6.14
	(b)	6.14
§312	(a)	7.01, 7.02(a)
	(b)	7.02(b)
	(c)	7.02(c)
§313	(a)	7.03(a)
	(b)	7.03(a)
	(c)	1.06, 7.03(a)
	(d)	7.03(b)
§ 314	(a)	7.04, 10.06
	(b)	Not Applicable
	(c)(1)	1.02
	(c)(2)	1.02
	(c)(3)	Not Applicable
	(d)	Not Applicable
	(e)	1.02
	(f)	Not Applicable
§315	(a)	6.01
	(b)	6.03, 7.03(a)
	(c)	6.01
	(d)	6.01
	(d)(1)	6.01
	(d)(2)	6.01
	(d)(3)	6.01
	(e)	5.14
	(a)(1)(A)	5.12
	(a)(1)(B)	5.13
§316	(a)(2)	Not Applicable
	(a)(last sentence)	1.01
§317	(b)	5.08
	(a)(1)	5.03
§318	(a)(2)	5.04
	(b)	10.03
	(a)	1.08



200FX&=&eN4itP6sc

NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be a part of this Subordinated Debt Securities Indenture.



**TABLE OF CONTENTS**

	<u>PAGE</u>
<b>ARTICLE 1</b>	
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION	
Section 1.01. <i>Definitions</i>	1
Section 1.02. <i>Compliance Certificates and Opinions</i>	13
Section 1.03. <i>Form of Documents Delivered to Trustee</i>	13
Section 1.04. <i>Acts of Holders</i>	14
Section 1.05. <i>Notices, Etc. to Trustee or Company</i>	15
Section 1.06. <i>Notice to Holders; Waiver</i>	16
Section 1.07. <i>Language of Notices, Etc</i>	16
Section 1.08. <i>Conflict with Trust Indenture Act</i>	16
Section 1.09. <i>Effect of Headings and Table of Contents</i>	17
Section 1.10. <i>Successors and Assigns</i>	17
Section 1.11. <i>Separability Clause</i>	17
Section 1.12. <i>Benefits of Subordinated Debt Securities Indenture</i>	17
Section 1.13. <i>Governing Law</i>	17
Section 1.14. <i>Business Days and Legal Holidays</i>	18
Section 1.15. <i>Appointment of Agent for Service</i>	18
Section 1.16. <i>Calculation Agent</i>	19
Section 1.17. <i>Waiver of Jury Trial</i>	19
Section 1.18. <i>Judgment Currency</i>	19
<b>ARTICLE 2</b>	
SUBORDINATED DEBT SECURITY FORMS	
Section 2.01. <i>Forms Generally</i>	20
Section 2.02. <i>Form of Trustee's Certificate of Authentication</i>	20
<b>ARTICLE 3</b>	
THE SUBORDINATED DEBT SECURITIES	
Section 3.01. <i>Amount Unlimited, Issuable in Series</i>	21
Section 3.02. <i>Denominations</i>	23
Section 3.03. <i>Execution, Authentication, Delivery and Dating</i>	24
Section 3.04. <i>Temporary Subordinated Debt Securities</i>	25
Section 3.05. <i>Registration, Registration of Transfer and Exchange</i>	25
Section 3.06. <i>Mutilated, Destroyed, Lost and Stolen Subordinated Debt Securities</i>	29
Section 3.07. <i>Payment; Interest Rights and Rights to Additional Amounts Preserved</i>	30
Section 3.08. <i>Persons Deemed Owners</i>	32
Section 3.09. <i>Cancellation</i>	33
Section 3.10. <i>Computation of Interest</i>	33
Section 3.11. <i>CUSIP Numbers</i>	33
Section 3.12. <i>Additional Subordinated Debt Securities</i>	34



Section 3.13.	<i>Correction of Minor Defects in or Amendment of Subordinated Debt Securities</i>	34
Section 3.14.	<i>Payments Subject to Fiscal Laws</i>	34

ARTICLE 4

SATISFACTION AND DISCHARGE

Section 4.01.	<i>Satisfaction and Discharge of Subordinated Debt Securities Indenture</i>	35
Section 4.02.	<i>Defeasance and Covenant Defeasance</i>	36
Section 4.03.	<i>Application of Trust Money</i>	40
Section 4.04.	<i>Repayment to Company</i>	40
Section 4.05.	<i>Reinstatement</i>	40

ARTICLE 5

REMEDIES

Section 5.01.	<i>Events of Default</i>	41
Section 5.02.	<i>Enforcement of Remedies</i>	41
Section 5.03.	<i>Collection of Indebtedness and Suits for Enforcement by the Trustee</i>	42
Section 5.04.	<i>Trustee May File Proofs of Claim</i>	43
Section 5.05.	<i>Trustee May Enforce Claims Without Possession of Subordinated Debt Securities</i>	44
Section 5.06.	<i>Application of Money Collected</i>	44
Section 5.07.	<i>Limitation on Suits</i>	44
Section 5.08.	<i>Unconditional Right of Holders to Receive Principal, Premium and Interest, if any, and Additional Amounts</i>	45
Section 5.09.	<i>Restoration of Rights and Remedies</i>	45
Section 5.10.	<i>Rights and Remedies Cumulative</i>	46
Section 5.11.	<i>Delay or Omission Not Waiver</i>	46
Section 5.12.	<i>Control by Holders</i>	46
Section 5.13.	<i>Waiver of Past Defaults</i>	46
Section 5.14.	<i>Undertaking for Costs</i>	47

ARTICLE 6

THE TRUSTEE

Section 6.01.	<i>Certain Duties and Responsibilities</i>	48
Section 6.02.	<i>Spanish Tax Procedures and Obligations of the Trustee</i>	49
Section 6.03.	<i>Notice of Defaults</i>	49
Section 6.04.	<i>Certain Rights of Trustee</i>	49
Section 6.05.	<i>Not Responsible for Recitals or Issuance of Subordinated Debt Securities</i>	51
Section 6.06.	<i>May Hold Subordinated Debt Securities</i>	52
Section 6.07.	<i>Money Held in Trust</i>	52
Section 6.08.	<i>Compensation and Reimbursement</i>	52
Section 6.09.	<i>Disqualification; Conflicting Interests</i>	53
Section 6.10.	<i>Corporate Trustee Required; Eligibility</i>	54



Section 6.11.	<i>Resignation and Removal; Appointment of Successor</i>	54
Section 6.12.	<i>Acceptance of Appointment by Successor</i>	56
Section 6.13.	<i>Merger, Conversion, Consolidation or Succession to Business</i>	57
Section 6.14.	<i>Preferential Collection of Claims</i>	57
Section 6.15.	<i>Appointment of Authenticating Agent</i>	57
Section 6.16.	<i>Appointment of Additional Trustees</i>	59
Section 6.17.	<i>Tax Withholding</i>	59

**ARTICLE 7**  
**HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY**

Section 7.01.	<i>The Company to Furnish Trustee Names and Addresses of Holders</i>	60
Section 7.02.	<i>Preservation of Information; Communication to Holders</i>	60
Section 7.03.	<i>Reports by Trustee</i>	60
Section 7.04.	<i>Reports by the Company</i>	61

**ARTICLE 8**  
**CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER**

Section 8.01.	<i>Company May Consolidate, Etc., Only on Certain Terms</i>	62
Section 8.02.	<i>Successor Corporation Substituted</i>	62
Section 8.03.	<i>Assumption of Obligations</i>	63
Section 8.04.	<i>Substitution and Variation</i>	64

**ARTICLE 9**  
**SUPPLEMENTAL INDENTURES**

Section 9.01.	<i>Supplemental Indentures without Consent of Holders</i>	65
Section 9.02.	<i>Supplemental Indentures with Consent of Holders</i>	66
Section 9.03.	<i>Execution of Supplemental Indentures</i>	67
Section 9.04.	<i>Effect of Supplemental Indentures</i>	68
Section 9.05.	<i>Conformity with Trust Indenture Act</i>	68
Section 9.06.	<i>Reference in Subordinated Debt Securities to Supplemental Indentures</i>	68

**ARTICLE 10**  
**COVENANTS**

Section 10.01.	<i>Payment of Principal, Premium, and Interest</i>	68
Section 10.02.	<i>Maintenance of Office or Agency</i>	68
Section 10.03.	<i>Money for Payments to be Held in Trust</i>	69
Section 10.04.	<i>Additional Amounts</i>	70
Section 10.05.	<i>Corporate Existence</i>	73
Section 10.06.	<i>Statement as to Compliance</i>	73
Section 10.07.	<i>Original Issue Document</i>	73



**ARTICLE 11**  
**REDEMPTION OF SUBORDINATED DEBT SECURITIES**

Section 11.01.	<i>Applicability of Article</i>	73
Section 11.02.	<i>Election to Redeem; Notice to Trustee</i>	74
Section 11.03.	<i>Selection by Trustee of Subordinated Debt Securities to Be Redeemed</i>	74
Section 11.04.	<i>Notice of Redemption</i>	74
Section 11.05.	<i>Deposit of Redemption Price</i>	75
Section 11.06.	<i>Subordinated Debt Securities Payable on Redemption Date</i>	75
Section 11.07.	<i>Subordinated Debt Securities Redeemed in Part</i>	76
Section 11.08.	<i>Optional Redemption Due to Changes in Tax Treatment</i>	76
Section 11.09.	<i>Optional Redemption For Capital Disqualification Event</i>	77
Section 11.10.	<i>Optional Early Redemption (Call)</i>	78
Section 11.11.	<i>Repurchase of Subordinated Debt Securities</i>	78

**ARTICLE 12**  
**SUBORDINATION OF SUBORDINATED DEBT SECURITIES**

Section 12.01.	<i>Subordinated Debt Securities Subordinate to Claims of Senior Creditors</i>	78
Section 12.02.	<i>Status of the Subordinated Debt Securities</i>	80
Section 12.03.	<i>Provisions Solely to Define Relative Rights</i>	80
Section 12.04.	<i>Waiver of Right of Set-off</i>	80
Section 12.05.	<i>Trustee to Effectuate Subordination</i>	81
Section 12.06.	<i>Trustee Not Fiduciary for Senior Creditors</i>	81
Section 12.07.	<i>Rights of Trustee as Senior Creditor; Preservation of Trustee's Rights</i>	81
Section 12.08.	<i>Article Applicable to Paying Agents</i>	81

**ARTICLE 13**  
**BAIL-IN AND RESOLUTION ACTIONS**

Section 13.01.	<i>Agreement and Acknowledgement with Respect to the Exercise of the Bail-in Power</i>	82
----------------	--	----



SUBORDINATED DEBT SECURITIES INDENTURE, dated as of [●], 2017, between BANCO SANTANDER, S.A., a *sociedad anónima* incorporated under the laws of the Kingdom of Spain (the “**Company**”), having its principal executive office located at Ciudad Grupo Santander, Avenida de Cantabria s/n, 28660 Boadilla del Monte, Madrid, Spain and THE BANK OF NEW YORK MELLON, acting through its London Branch, a banking corporation duly organized and existing under the laws of the State of New York as Trustee (the “**Trustee**”), having its Corporate Trust Office at One Canada Square, London, E14 5AL, United Kingdom.

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Subordinated Debt Securities Indenture to provide for the issuance from time to time of its subordinated debt securities (the “**Subordinated Debt Securities**”), to be issued in one or more series, represented by one or more Global Securities in registered form, or represented by definitive Subordinated Debt Securities in registered form, the amount and terms of each such series to be determined as hereinafter provided.

All things necessary to make this Subordinated Debt Securities Indenture a valid and binding agreement of the Company, in accordance with its terms, have been done.

This Subordinated Debt Securities Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder that are required to be part of this Subordinated Debt Securities Indenture and, to the extent applicable, shall be governed by such provisions.

NOW, THEREFORE, THIS SUBORDINATED DEBT SECURITIES INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Subordinated Debt Securities by the Holders (as defined herein) thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of Subordinated Debt Securities of any series as follows:

ARTICLE 1  
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. *Definitions.* For all purposes of this Subordinated Debt Securities Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;





(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles and, except as otherwise herein expressly provided, the term “generally accepted accounting principles” with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the Kingdom of Spain at the date of such computation and as applied by the Company;

(4) the words “**herein**,” “**hereof**” and “**hereunder**” and other words of similar import refer to this Subordinated Debt Securities Indenture as a whole and not to any particular Article, Section or other subdivision;

(5) any reference to an “**Article**” or a “**Section**” refers to an Article or Section of this Subordinated Debt Securities Indenture; and

(6) the word “or” is always used inclusively (for example, the phrase “A or B” means “A or B or both”, not “either A or B but not both”).

Certain terms used principally in certain Articles hereof are defined in those Articles.

“**Act**”, when used with respect to any Holder, has the meaning set forth in Section 1.04.

“**Additional Amounts**” has the meaning set forth in Section 10.04.

“**Additional Subordinated Debt Securities**” has the meaning set forth in Section 3.12.

“**Additional Tier 1 Instrument**” means any contractually subordinated obligation (*créditos subordinados*) of the Company according to Article 92.2° of the Spanish Insolvency Law, ranking as an additional tier 1 instrument (*instrumentos de capital adicional de nivel 1*) under Additional Provision 14.2°(c) of Law 11/2015.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “**control**” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing.

“**Agents**” means the agents appointed in accordance with this Subordinated Debt Securities Indenture or applicable supplemental indenture;

“**Agent Member**” means a member of, or participant in, any Depository.



200FX&=&eN4i&.lrL\*

“**Amounts Due**” means the principal amount of, premium, if any, together with any accrued but unpaid interest, and Additional Amounts, if any, due on the Subordinated Debt Securities of any series. References to such amounts will include amounts that have become due and payable, but which have not been paid, prior to the exercise of the Bail-in Power by the Relevant Resolution Authority.

“**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 Company and/or the Group including, without limitation to the generality of the foregoing, those regulations, requirements, guidelines and policies relating to capital adequacy, resolution and/or solvency then in effect of the Regulator (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 Company and/or the Group).

“**Authenticating Agent**” means any Person authorized by the Trustee to act on behalf of the Trustee to authenticate Subordinated Debt Securities.

“**Authorized Newspaper**” means a newspaper, in an official language of the place of publication or in the English language, customarily published on each day that is a Business Day in the place of publication, whether or not published on days that are Legal Holidays in the place of publication, and of general circulation in each place in connection with which the term is used or in the financial community of each such place. Where successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different newspapers in the same city meeting the foregoing requirements and in each case on any day that is a Business Day in the place of publication.

“**Bail-in Power**” means any statutory write-down and/or conversion power existing from time to time under any laws, regulations, rules or requirements in effect in the Kingdom of Spain relating to the resolution of Regulated Entities applicable to the Company or other Regulated Entities of the group, including (but not limited to) (i) the transposition of the BRRD (including but not limited to, Law 11/2015, Royal Decree 1012/2015 and any other implementing regulations) as amended or superseded from time to time, (ii) Regulation (EU) No. 806/2014 of the European Parliament and of 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 superseded from time to time, the “**SRM Regulation**”) and (iii) the instruments, rules and standards created thereunder, pursuant to which any obligation of a Regulated Entity (or an affiliate of such Regulated Entity) can be reduced, cancelled and/or converted into shares or other securities or obligations of such Regulated Entity (or affiliate of such Regulated Entity) or any other person.

“**Board of Directors**” means either the board of directors of the Company or any committee or Person duly authorized to act generally or in any particular respect for the Company hereunder.



“**Board Resolution**” means a copy of a resolution certified by the Secretary or an Assistant Secretary or any Person duly authorized by the Company to have been duly adopted by the relevant Board of Directors or an authorized committee thereof and to be in full force and effect on the date of such certification and delivered to the Trustee.

“**BRRD**” means Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, as amended or superseded from time to time.

“**Business Day**” means, unless otherwise provided in the form of Subordinated Debt Securities for any particular series pursuant to the provisions of this Subordinated Debt Securities Indenture, any day, other than Saturday or Sunday, that is neither a Legal Holiday nor a day on which banking institutions are authorized or required by law, regulation or executive order to close in the City of New York, London, Madrid or any other place or places where the principal of, or any premium or interest on, or any Additional Amounts with respect to the Subordinated Debt Securities of that series are payable.

“**Calculation Agent**” means the Trustee or such other person authorized by the Company as the party responsible for calculating the rate(s) of interest and interest amount(s) and/or such other amount(s) from time to time in relation to any series of Subordinated Debt Securities.

“**Capital Disqualification Event**” means a change in Spanish law, Applicable Banking Regulations or any change in the application or official interpretation thereof that results or is likely to result in the entire outstanding aggregate principal amount of Subordinated Debt Securities of any series ceasing to be included in, or counting towards, the Company and/or the Group’s Tier 2 Capital.

“**Commission**” means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“**Company**” means the Person named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Subordinated Debt Securities Indenture, and thereafter “Company” shall mean such successor Person.

“**Company Request**” and “**Company Order**” mean, respectively, a written request or order, as the case may be, signed in the name of the Company by any member of the Board of Directors or any officer or representative of the Company empowered to do so by Board Resolution, and delivered to the Trustee.

“**Conversion Event**” means the cessation of use of (i) a Foreign Currency both by the government of the country which issued such currency and for the settlement of transactions by a central bank or other public institutions of or within the international banking community, or (ii) the euro both within the European monetary system and for the settlement of transactions by public institutions of or within the European Union.



“**Corporate Trust Office**” means the office of the Trustee at which its corporate trust business in London, England, is principally administered, which office as of the date hereof is located at One Canada Square, London E14 5AL (Attention: Corporate Trust Administration, facsimile: +44 20 7964 2536) or, if a different Trustee is appointed for a particular series of Subordinated Debt Securities, the address set forth in the supplemental indenture naming the Trustee for that particular series of Subordinated Debt Securities.

The term “**corporation**” includes corporations, associations, companies, partnerships and business trusts.

“**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 and amending Regulation (EU) No. 648/2012 or such other regulation as may come into effect in place thereof.

“**Default Interest**” has the meaning set forth in Section 3.07.

“**Depository**” means, with respect to any series of Subordinated Debt Securities, a clearing agency that is designated to act as Depository for the Global Securities evidencing all or part of such Subordinated Debt Securities as contemplated by Section 3.05.

“**dollar**” or “**\$**” or any similar reference means the coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

“**DTC**” means The Depository Trust Company or its nominee or its or their successor.

“**Early Redemption Amount (Call)**” has the meaning set forth in Section 11.10.

“**Early Redemption Amount (Capital Disqualification Event)**” has the meaning set forth in Section 11.09.

“**Early Redemption Amount (Tax)**” has the meaning set forth in Section 11.08.

“**Early Termination Amount**” means the amount immediately due and payable if any Event of Default set forth in paragraph (a)(ii) of Section 5.01 has occurred in relation to any series of Subordinated Debt Securities and the Trustee or the holders of at least 25% in outstanding principal amount of the senior debt securities of that series has, at their discretion, declared that the Subordinated Debt Securities of such series and all interest then accrued thereon is due and payable forthwith.



“**EUR**”, “**euro**” or “**€**” means the currency of the member states of the European Union (“**EU**”) that, from time to time, have adopted the single currency in accordance with the treaty establishing the European Community, as amended from time to time.

“**Event of Default**” has the meaning specified in Section 5.01.

“**Exchange Act**” means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the Commission thereunder.

“**Foreign Currency**” means the euro or any currency issued by the government of any country (or a group of countries or participating member states) other than the United States which as at the time of payment is legal tender for the payment of public and private debts.

“**Foreign Government Securities**” means with respect to Subordinated Debt Securities of any series that are denominated in a Foreign Currency, non-callable (i) direct obligations of the participating member state or government that issued such Foreign Currency for the payment of which obligations its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of such participating member state or government, the payment of which obligations is unconditionally guaranteed as a full faith and credit obligation of such participating member state or government. For the avoidance of doubt, for all purposes hereof, euro shall be deemed to have been issued by each participating member state from time to time.

“**Global Security**” means one or more global certificates evidencing all or part of a series of Subordinated Debt Securities, authenticated and delivered to or on behalf of the Holder and registered in the name of the Holder or its nominee.

“**Group**” means Banco Santander, S.A. and its consolidated subsidiaries.

“**Holder**” means a Person in whose name a Subordinated Debt Security in global or definitive form is registered in the Subordinated Debt Security Register.

“**Independent Public Accountants**” means accountants or a firm of accountants that, with respect to the Company and any other obligor under the Subordinated Debt Securities, are independent public accountants within the meaning of the Securities Act of 1933, as amended, and the rules and regulations promulgated by the Commission thereunder, who may be the independent public accountants regularly retained by the Company or who may be other independent public accountants.

“**Interest Payment Date**”, when used with respect to any Subordinated Debt Security, means the Stated Maturity of any installment of interest on such Subordinated Debt Security.

“**Law 11/2015**” means Law 11/2015, of June 18, for the recovery and resolution of credit institutions and investment firms (*Ley 11/2015, de 18 de junio, de recuperacion y resolucion de entidades de credito y empresas de servicios de inversion*), as amended from time to time.



“**Legal Holiday**”, with respect to any Place of Payment or other location, means a Saturday, a Sunday or a day on which banking institutions in such Place of Payment or other location are not authorized or obligated to be open.

“**Losses**” means any and all claims, losses, liabilities, damages, costs, expenses and judgments (including legal fees and expenses) sustained by the Company or the Trustee.

“**Maturity**”, when used with respect to any Subordinated Debt Security, means the date, if any, on which the principal or any installment of principal of such Subordinated Debt Security becomes due and payable as therein or herein provided, whether by call for redemption, repurchase, declaration of acceleration or otherwise.

“**Officer’s Certificate**” means a certificate signed by any member of the Board of Directors, the Secretary or the Deputy Secretary of the Board of Directors, a Vice President or any officer or any other Person duly authorized by the Company, that complies with the requirements of Section 314(e) of the Trust Indenture Act and is delivered to the Trustee.

“**Opinion of Counsel**” means a written opinion of legal advisors, who may be an employee of or legal advisors for the Company or other legal advisors who shall be reasonably acceptable to the Trustee and that, if required by the Trust Indenture Act, complies therewith.

“**Original Issue Discount Security**” means any Subordinated Debt Security which provides for an amount less than the principal amount, to be due and payable upon maturity thereof.

“**Outstanding**”, when used with respect to Subordinated Debt Securities or any series of Subordinated Debt Securities means (except as otherwise specified pursuant to Section 3.01), as of the date of determination, all Subordinated Debt Securities or all Subordinated Debt Securities of such series, as the case may be, theretofore authenticated and delivered under this Subordinated Debt Securities Indenture, except:

(i) Subordinated Debt Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(ii) Subordinated Debt Securities, or portions thereof, for whose payment or redemption money, U.S. Government Obligations or Foreign Government Securities in the necessary amount have been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Subordinated Debt Securities; provided, that, if such Subordinated Debt Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Subordinated Debt Securities Indenture or provision therefor satisfactory to the Trustee has been made;



(iii) any such Subordinated Debt Security with respect to which the Company has effected defeasance pursuant to the terms hereof, except to the extent provided in Section 4.02; and

(iv) Subordinated Debt Securities which have been paid pursuant to Section 11.06 or in exchange for or in lieu of which other Subordinated Debt Securities have been authenticated and delivered pursuant to this Subordinated Debt Securities Indenture, other than any such Subordinated Debt Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Subordinated Debt Securities are held by a bona fide purchaser in whose hands such Subordinated Debt Securities are valid obligations of the Company;

*provided, however,* that in determining whether the Holders of the requisite principal amount of the Outstanding Subordinated Debt Securities of any series have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (i) the principal amount of a Subordinated Debt Security denominated in a Foreign Currency shall be the Dollar equivalent, determined on the date of original issuance of such Subordinated Debt Security, of the principal amount of such Subordinated Debt Security; and (ii) Subordinated Debt Securities beneficially owned by the Company or any other obligor upon the Subordinated Debt Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Subordinated Debt Securities for which a Responsible Officer of the Trustee has received an Officer's Certificate stating that such Subordinated Debt Securities are so beneficially owned shall be so disregarded; provided, further, however, that Subordinated Debt Securities so beneficially owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Subordinated Debt Securities and that the pledgee is not the Company or any other obligor upon the Subordinated Debt Securities or any Affiliate of the Company or of such other obligor.

**"Paying Agent"** means any Person (which may include the Company) authorized by the Company to pay the principal of, or any premium or interest on, or any Additional Amounts with respect to, any Subordinated Debt Securities on behalf of the Company. Except as otherwise specified as contemplated by Section 3.01 hereof, The Bank of New York Mellon, acting through its London Branch will act as Principal Paying Agent in respect of the Subordinated Debt Securities of any series.

**"Payment Statement"** means the statement to be delivered to the Company by the Trustee, substantially in the form set forth in Exhibit I to Appendix I, pursuant to Section 6.02.



“**Person**” means any individual, company, corporation, firm, partnership, joint venture, association, organization, state or agency of a state or other entity, whether or not having separate legal personality.

“**Place of Payment**”, when used with respect to the Subordinated Debt Securities of any series, means the place or places where the principal of, or any premium or interest on, or any Additional Amounts with respect to the Subordinated Debt Securities of that series are payable as specified pursuant to Section 3.01 or, if not so specified, as specified in Section 10.02.

“**Predecessor Security**” of any particular Subordinated Debt Security means every previous Subordinated Debt Security evidencing all or a portion of the same debt as that evidenced by such particular Subordinated Debt Security; and, for the purposes of this definition, any Subordinated Debt Security authenticated and delivered under Section 3.06 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Subordinated Debt Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Subordinated Debt Security.

“**Qualifying Notes**” means, with respect to each series of Subordinated Debt Securities, at any time, any securities issued directly by the Company that have terms not otherwise materially less favorable to the holders of the Subordinated Debt Securities of such series than the terms of the Subordinated Debt Securities of such series, provided that the Company shall have delivered a certificate signed by two directors of the Company to that effect to the Trustee not less than five Business Days prior to (x) in the case of a substitution of the Subordinated Debt Securities of any series pursuant to Section 8.04, the issue date of the relevant securities or (y) in the case of a variation of the Subordinated Debt Securities of any series pursuant to Section 8.04, the date such variation becomes effective, provided that such securities shall:

(i) contain terms which comply with the then current requirements for their inclusion in the Tier 2 Capital of the Company; and

(ii) carry the same rate of interest as the Subordinated Debt Securities of such series prior to the relevant substitution or variation pursuant to Section 8.04; and

(iii) have the same denomination and aggregate outstanding principal amount as the Subordinated Debt Securities of such series prior to the relevant substitution or variation pursuant to Section 8.04; and

(iv) have the same date of maturity and the same dates for payment of interest as the Subordinated Debt Securities of such series prior to the relevant substitution or variation pursuant to Section 8.04; and

(v) have at least the same ranking as the Subordinated Debt Securities of such series; and





(vi) not, immediately following such substitution or variation, be subject to a Capital Disqualification Event and/or a tax event that would entitle the Company to redeem the debt securities as set forth under Section 11.08; and

(vii) be listed or admitted to trading on any stock exchange as selected by the Company, if the Subordinated Debt Securities of such series were listed or admitted to trading on a stock exchange immediately prior to the relevant substitution or variation pursuant to Section 8.04.

**“Redemption Date”**, when used with respect to any Subordinated Debt Security to be redeemed, means the date fixed for such redemption by or pursuant to this Subordinated Debt Securities Indenture.

**“Redemption Price”**, when used with respect to any Subordinated Debt Security to be redeemed, means the price at which it is to be redeemed pursuant to this Subordinated Debt Securities Indenture, which shall include the Early Redemption Amount (Tax), Early Redemption Amount (Call) or Early Redemption Amount (Capital Disqualification Event), as applicable.

**“Regular Record Date”** for the interest payable on any Interest Payment Date on Subordinated Debt Securities of any series means the date specified for the purpose pursuant to Section 3.01.

**“Regulated Entity”** means any legal person to which BRRD, as implemented in the Kingdom of Spain (including but not limited to, Law 11/2015, Royal Decree 1012/2015 and any other implementing regulations) as amended or superseded from time to time), the SRM Regulation, or any other Spanish law relating to Bail-in Power, applies, which includes, certain credit entities, investment firms, and certain parent or holding companies.

**“Regulator”** means the European Central Bank or such other or successor authority exercising primary bank supervisory authority, in each case with respect to prudential matters in relation to the Group;

**“Relevant Resolution Authority”** means the Spanish Fund for the Orderly Restructuring of Banks or the European Single Resolution Mechanism, as the case may be, according to Law 11/2015, and any other entity with the authority to exercise the Bail-in Power or any other resolution power from time to time.

**“Responsible Officer”**, when used with respect to the Trustee, means any officer of the Trustee assigned to or working in the corporate trust department (or any successor unit) of the Trustee located at the Corporate Trust Office of the Trustee, who shall have direct responsibility for the administration of this Subordinated Debt Securities Indenture and, for the purposes of Section 6.01(c)(ii), shall also include any other officer of the Trustee to whom any corporate trust matter is referred because of such officer’s knowledge of and familiarity with the particular subject.



“**Senior Creditors**” means creditors of the Company whose claims are non-subordinated obligations of the Company, any Senior Subordinated Liabilities (as defined below) and any claim on the Company, which becomes subordinated as a consequence of article 92.1° of the Spanish Insolvency Law.

“**Senior Subordinated Liabilities**” means any contractually subordinated obligation (*créditos subordinados*) of Banco Santander according to Article 92.2° of the Spanish Insolvency Law, other than an Additional Tier 1 Instrument or a Tier 2 Instrument.

“**Spanish Insolvency Law**” means Law 22/2003 (*Ley Concursal*) of 9 July 2003 regulating insolvency proceedings in Spain, or an equivalent legal provision which replaces it in the future.

“**Special Record Date**”, when used for the payment of any Default Interest on Subordinated Debt Securities of any series, means the date specified by the Company for the purpose pursuant to Section 3.07.

“**SRM Regulation**” means Regulation (EU) No. 806/2014 of the European Parliament and of 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 superseded from time to time.

“**Stated Maturity**”, when used with respect to any Subordinated Debt Security or any installment of principal thereof or interest thereon, means the date or dates, if any, specified in, or determined in accordance with the terms of, such Subordinated Debt Security, including as the same may be modified pursuant to the Bail-in Power set forth in Article 13, as the fixed date or dates on which the principal of such Subordinated Debt Security or such installment of principal or interest (and Additional Amounts, if any) is due and payable.

“**Subordinated Debt Securities**”, has the meaning set forth in the recitals of the Company herein and more particularly means any series of Subordinated Debt Securities issued, authenticated and delivered under this Subordinated Debt Securities Indenture.

“**Subordinated Debt Securities Indenture**” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms and forms of particular series of Subordinated Debt Securities established pursuant to Section 3.01.

“**Subordinated Debt Security**” means one of the Subordinated Debt Securities.

“**Subordinated Debt Security Register**” and “**Subordinated Debt Security Registrar**” have the respective meanings specified in Section 3.05.



“**Subsidiary**” means any entity over which the Company may have, directly or indirectly, control in accordance with Applicable Banking Regulations;

“**Supervisory Permission**” means, in relation to any action, such supervisory permission (or, as appropriate, waiver) from the Regulator and/or the Relevant Resolution Authority as is required therefor under Applicable Banking Regulations.

“**Tier 2 Capital**” means at any time, with respect to the Company or the Group, as the case may be, the Tier 2 capital of the Company or the Group, respectively, as calculated by the Company in accordance with Chapter 4 (Tier 2 capital) of Title I (Elements of own funds) of Part Two (Own Funds) of the CRR and/or Applicable Banking Regulations at such time, including any applicable transitional, phasing in or similar provisions.

“**Tier 2 Instrument**” means any contractually subordinated obligation (*créditos subordinados*) of the Company according to Article 92.2° of the Spanish Insolvency Law, ranking as a tier 2 instrument (*instrumentos de capital de nivel 2*) under Additional Provision 14.2°(b) of Law 11/2015.

“**Trustee**” means the Person named as the “**Trustee**” in the first paragraph of this instrument until a successor trustee shall have become such pursuant to the applicable provisions of this Subordinated Debt Securities Indenture, and thereafter “**Trustee**” shall mean the Person who is then the Trustee hereunder, or, if a different Trustee is appointed for a particular series of Subordinated Debt Securities, the Trustee named in the relevant indenture supplemental hereto as the Trustee for that particular series of Subordinated Debt Securities and if at any time there is more than one such Person, “**Trustee**” shall mean and include each such Person; and “**Trustee**” as used with respect to the Subordinated Debt Securities of any series shall mean the Trustee with respect to the Subordinated Debt Securities of such series.

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as in effect at the date as of which this instrument was executed, except as provided in Section 9.05.

“**United States**” and “**U.S.**” mean the United States of America and, except in the case of Section 6.10 and 6.15, its territories and possessions.

“**U.S. Government Obligations**” means securities that are non-callable and nonredeemable at the option of the issuer and that are (i) direct obligations of the United States for which its full faith and credit are pledged and/or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States, the payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act of 1933, as amended), which may include the Trustee, as custodian with respect to any such U.S. Government Obligation or a specific payment of principal of or interest on any such U.S. Government Obligation held by such custodian for the account of the holder of such depository



200FX&=&eN2GhFXs5

receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal of or interest on or other amount with respect to the U.S. Government Obligation evidenced by such depository receipt.

Section 1.02. *Compliance Certificates and Opinions.* Unless otherwise expressly provided for in this Subordinated Debt Securities Indenture, upon any application or request by the Company to the Trustee to take any action under any provision of this Subordinated Debt Securities Indenture, the Company shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent, if any, provided for in this Subordinated Debt Securities Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of the legal advisor rendering such opinion all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Subordinated Debt Securities Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Subordinated Debt Securities Indenture (other than Section 10.06) shall include:

- (a) a statement that each Person signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of each such Person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of each such Person, such condition or covenant has been complied with.

Section 1.03. *Form of Documents Delivered to Trustee.* In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, legal advisors, unless such officer knows, or in the exercise of reasonable care should know,



that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion or representations are based are erroneous. Any such certificate or opinion of, or representations by, legal advisors may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company unless such legal advisors know, or in the exercise of reasonable care should know, that the certificate or opinion or representation with respect to such matters is erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Subordinated Debt Securities Indenture, they may, but need not, be consolidated and form one instrument.

Section 1.04. *Acts of Holders.* (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Subordinated Debt Securities Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, when it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “**Act**” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Subordinated Debt Securities Indenture and (subject to Section 6.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. When such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Subordinated Debt Securities shall be proved by the Subordinated Debt Security Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Subordinated Debt Security shall bind every future Holder of the same Subordinated Debt Security and the Holder of every Subordinated Debt Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee, any Subordinated Debt Security Registrar, any Paying Agent, any Authenticating Agent, the Company in reliance thereon, whether or not notation of such action is made upon such Subordinated Debt Security or such other Subordinated Debt Security.



(e) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a Board Resolution or an Officer's Certificate, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Outstanding Subordinated Debt Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Subordinated Debt Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Subordinated Debt Securities Indenture not later than six months after the record date.

Section 1.05. *Notices, Etc. to Trustee or Company.* Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Subordinated Debt Securities Indenture to be made upon, given or furnished to, or filed with,

(a) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if made, given, furnished or filed in writing (which may be via facsimile or email delivery of a copy of such document) to the Trustee at its Corporate Trust Office, and the Trustee agrees to accept and act upon facsimile transmission or email delivery of written instructions pursuant to this Subordinated Debt Securities Indenture, provided, however, that (x) the party providing such written instructions, subsequent to such transmission of written instructions, shall provide the originally executed instructions or directions to the Trustee in a timely manner, and (y) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions; or

(b) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class air mail postage prepaid, to the Company, to the address of its principal office specified in the first paragraph of this Subordinated Debt Securities Indenture or at any other address previously furnished in writing to the Trustee by the Company.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Subordinated Debt Securities Indenture sent by unsecured e-mail, portable document format (PDF), facsimile transmission or other similar unsecured electronic methods, provided, however, that the Trustee shall have received from the Company an



incumbency certificate listing persons designated to give such instructions or directions and containing the titles and specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing, and provided further that the Trustee shall have no obligation or responsibility to confirm or verify that the instruction or direction was in fact sent by, or on behalf of, a person so designated to give instructions or directions. If the Company elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding a conflict or inconsistency between such instructions and a subsequent written instruction. The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 1.06. *Notice to Holders; Waiver.* When this Subordinated Debt Securities Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if given in writing and mailed, first-class postage prepaid, to each Holder of a Subordinated Debt Security affected by such event in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act with respect to reports pursuant to Section 7.03(a).

For so long as the Subordinated Debt Securities of any series are represented by Global Securities, the Company will deliver a copy of all notices with respect to such series to the Holder (if the address of such Holder is known to the Company).

When notice to Holders of Subordinated Debt Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Subordinated Debt Securities Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 1.07. *Language of Notices, Etc.* Any notice under this Subordinated Debt Securities Indenture shall be in the English language, except that, if the Company so elects, any published notice may be in an official language of the country of publication.

Section 1.08. *Conflict with Trust Indenture Act.* If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in



this Subordinated Debt Securities Indenture by any of the provisions of the Trust Indenture Act, such required provision of the Trust Indenture Act shall control. If at any future time any provision required to be included herein by the Trust Indenture Act as in force at the date as of which this Subordinated Debt Securities Indenture was executed or any limitation imposed by the Trust Indenture Act at such date on any provision otherwise included herein would not be so required or imposed (in whole or in part) if this Subordinated Debt Securities Indenture were executed at such future time, the Company and the Trustee may enter into one or more indentures supplemental hereto pursuant to Section 9.01 to change or eliminate (in whole or in part) such provision or limitation of this Subordinated Debt Securities Indenture in conformity with the requirements of the Trust Indenture Act as then in force, except that (subject to Article 9) no provision or limitation required to be included herein by Sections 310(a)(1) and (a)(2), 315(a), (c), (d)(1), (d)(2), (d)(3) and (e), 316(a)(1)(A), (a)(1)(B), (a)(2), (a) (last sentence) and (b) of the Trust Indenture Act as in force at the date as of which this Subordinated Debt Securities Indenture was executed may be so changed or eliminated.

Section 1.09. *Effect of Headings and Table of Contents.* The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.10. *Successors and Assigns.* All covenants and agreements in this Subordinated Debt Securities Indenture by the Company shall bind its respective successors and assigns, whether so expressed or not.

Section 1.11. *Separability Clause.* In case any provision in this Subordinated Debt Securities Indenture or in the Subordinated Debt Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.12. *Benefits of Subordinated Debt Securities Indenture.* Nothing in this Subordinated Debt Securities Indenture or in the Subordinated Debt Securities, express or implied, shall give to any Person, other than the parties hereto and any Subordinated Debt Securities Registrars or any Paying Agent or Calculation Agent with respect to any Subordinated Debt Securities and their successors hereunder, and the Holders of Subordinated Debt Securities, any benefit or any legal or equitable right, remedy or claim under this Subordinated Debt Securities Indenture.

Section 1.13. *Governing Law.* This Subordinated Debt Securities Indenture and the Subordinated Debt Securities shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to the choice of law provisions), except for Section 12.01, which shall be governed by and construed in accordance with the laws of Spain, and except that the authorization and execution of this Subordinated Debt Securities Indenture and the Subordinated Debt Securities shall be governed by (in addition to the laws of the State of New York relevant to execution) the respective jurisdictions of organization of the Company and the Trustee, as the case may be.





Section 1.14. *Business Days and Legal Holidays.* The terms of the Subordinated Debt Securities shall provide that, in any case where any Interest Payment Date, Redemption Date, Maturity or Stated Maturity, of a Subordinated Debt Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Subordinated Debt Securities Indenture or the Subordinated Debt Securities other than a provision in the Subordinated Debt Securities that specifically states that such provision shall apply in lieu of this Section) payments of interest, if any (and premium, if any) or principal and the exchange of the Subordinated Debt Security need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment (or such other Business Day as shall be provided in such Subordinated Debt Security) with the same force and effect as if made on such Interest Payment Date, Redemption Date, Maturity or Stated Maturity, provided that no interest shall accrue on such payment for the period from and after such Interest Payment Date, Redemption Date, Maturity or Stated Maturity, as the case may be.

Section 1.15. *Appointment of Agent for Service.* The Company has designated and appointed Banco Santander, S.A., New York Branch, 45 E. 53<sup>rd</sup> Street, New York, New York 10022, as its authorized agent (the "Authorized Agent"), which process may be served in any suit or proceeding in any Federal or State court in the Borough of Manhattan, The City of New York arising out of or relating to the Subordinated Debt Securities or this Subordinated Debt Securities Indenture, but for that purpose only, and agrees that service of process upon said Authorized Agent shall be deemed in every respect effective service of process upon it in any such suit or proceeding in any Federal or State court in the Borough of Manhattan, The City of New York, New York. Such appointment shall be irrevocable so long as any of the Subordinated Debt Securities remain Outstanding until the appointment of a successor by the Company and such successor's acceptance of such appointment. Upon such acceptance, the Company shall notify the Trustee of the name and address of such successor. The Company further agrees to take any and all action, including the execution and filing of any and all such documents and instruments, as may be necessary to continue such designation and appointment of said Authorized Agent in full force and effect so long as any of the Subordinated Debt Securities shall be Outstanding. The Trustee shall not be obligated and shall have no responsibility with respect to any failure by the Company to take any such action. The Company hereby irrevocably submits (for the purposes of any such suit or proceeding) to the non-exclusive jurisdiction of any such court in which any such suit or proceeding is so instituted, and waives, to the extent it may effectively do so, any objection it may have now or hereafter to the laying of the venue of any such suit or proceeding. To the extent that the Company may be entitled, in any jurisdiction in which judicial proceedings may at any time be commenced with respect to or arising out of this Subordinated Debt Securities Indenture to claim for itself or its revenues, assets or properties immunity (whether by reason of sovereign immunity or otherwise) from suit, from the jurisdiction of any court (including, but not limited to, any court of the United States of America or the State of New York) or from any legal process with respect to itself or its property, from attachment prior to judgment, from set-off, from execution of a judgment, from the grant of injunctive relief, whether prior to or after judgment, or from any other legal process (including, without limitation, in relation to enforcement of any arbitration award), and to the extent that in any such jurisdiction there may be attributed



such an immunity (whether or not claimed), the Company hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity and consents to the grant of any such relief.

Section 1.16. *Calculation Agent.* If the Company appoints a Calculation Agent pursuant to Section 3.01 with respect to any series of Subordinated Debt Securities, any determination of the interest rate on, or other amounts in relation to, such series of Subordinated Debt Securities in accordance with the terms of such series of Subordinated Debt Securities by such Calculation Agent shall (in the absence of manifest error, bad faith or willful misconduct) be binding on the Company, the Trustee and all Holders and (in the absence of manifest error, bad faith or willful misconduct) no liability to the Holders shall attach to the Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions.

Section 1.17. *Waiver of Jury Trial.* EACH OF THE PARTIES HERETO, AND EACH HOLDER OF A SUBORDINATED DEBT SECURITY BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUBORDINATED DEBT SECURITIES INDENTURE, THE SUBORDINATED DEBT SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 1.18. *Judgment Currency.* Any payment on account of an amount that is payable in U.S. dollars (the “**Required Currency**”) which is made to or for the account of any Holder or the Trustee in lawful currency of any other jurisdiction (the “**Judgment Currency**”), whether as a result of any judgment or order or the enforcement thereof or the liquidation of the Company shall constitute a discharge of the Company obligation under this Subordinated Debt Securities Indenture and the Subordinated Debt Securities only to the extent of the amount of the Required Currency such Holder or the Trustee, as the case may be, could purchase in the London foreign exchange markets with the amount of the Judgment Currency in accordance with normal banking procedures at the rate of exchange prevailing on the first Business Day following receipt of the payment in the Judgment Currency. If the amount of the Required Currency that could be so purchased is less than the amount of the Required Currency originally due to such Holder or the Trustee, as the case may be, the Company shall indemnify and hold harmless the Holder or the Trustee, as the case may be, from and against all loss or damage arising out of, or as a result of, such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Subordinated Debt Securities Indenture or the Subordinated Debt Securities, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by any Holder or the Trustee from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due hereunder or under any judgment or order.



200FX&=8eN2PR2B5Y

**ARTICLE 2**  
SUBORDINATED DEBT SECURITY FORMS

Section 2.01. *Forms Generally.* The Subordinated Debt Securities of each series shall be issuable in registered form and in such forms as shall be established by or pursuant to a Board Resolution of the Company, an Officer’s Certificate, or in one or more indentures supplemental hereto, pursuant to Section 3.01, in each case with such insertions, omissions, substitutions and other variations as are required or permitted by this Subordinated Debt Securities Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with any applicable law or rule or regulation made pursuant thereto or with the rules of any securities exchange or Depositary therefor, or as may, consistently herewith, be determined by the officers executing such Subordinated Debt Securities, all as evidenced by any such execution.

The Trustee’s certificates of authentication shall be in substantially the form set forth in Section 2.02 or Section 6.15.

Any definitive Subordinated Debt Securities shall be printed, lithographed or engraved or produced by any combination of these methods or may be produced in any other manner permitted by the rules of any securities exchange on which the Subordinated Debt Securities may be listed, all as determined by the officers executing such Subordinated Debt Securities, as evidenced by their execution thereof.

Section 2.02. *Form of Trustee’s Certificate of Authentication.* The Trustee’s certificate of authentication shall be in substantially the following form:

**CERTIFICATE OF AUTHENTICATION**

This is one of the Subordinated Debt Securities of the series designated herein referred to in the within-mentioned Subordinated Debt Securities Indenture.

Date: \_\_\_\_\_

THE BANK OF NEW YORK MELLON, as Trustee

By: \_\_\_\_\_  
Authorized Signatory



ARTICLE 3  
THE SUBORDINATED DEBT SECURITIES

Section 3.01. *Amount Unlimited, Issuable in Series.* The aggregate principal amount of Subordinated Debt Securities which may be authenticated and delivered under this Subordinated Debt Securities Indenture is unlimited. The Subordinated Debt Securities may be issued in one or more series.

There shall be established by or pursuant to a Board Resolution of the Company, or established by an Officer's Certificate, or established in one or more indentures supplemental hereto, prior to the initial issuance of Subordinated Debt Securities of any series,

(a) the title of the Subordinated Debt Securities of the series (which shall distinguish the Subordinated Debt Securities of the series from all other Subordinated Debt Securities);

(b) the price or prices (expressed as a percentage of the principal amount thereof) at which the Subordinated Debt Securities of the series shall be issued;

(c) any limit upon the aggregate principal amount of the Subordinated Debt Securities of the series which may be authenticated and delivered under this Subordinated Debt Securities Indenture (except for Subordinated Debt Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Subordinated Debt Securities of the series pursuant to Section 3.04, 3.05, 3.06, 9.06 or 11.07 and except for any Subordinated Debt Securities which, pursuant to Section 3.03 are deemed never to have been authenticated and delivered hereunder);

(d) the date or dates, if any, on which the principal of (and premium, if any, on) the Subordinated Debt Securities of the series is payable;

(e) the rate or rates, if any, at which the Subordinated Debt Securities of the series shall accrue interest or the manner of calculation of such rate or rates, if any, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable or the manner of determination of such Interest Payment Dates, if other than as specified in Section 3.07 and the Regular Record Date for the interest payable on any Interest Payment Date and any dates required to be established pursuant to Section 7.01;

(f) whether any premium, upon redemption or otherwise, shall be payable by the Company on Subordinated Debt Securities of the series, and whether such premium shall be redeemable at the option of the Company or the Holder;

(g) the place or places where the principal of (and premium, if any) and any interest on Subordinated Debt Securities of the series shall be payable, and the Paying Agent or Paying Agents who shall be authorized to pay principal of (and premium, if any) and interest on Subordinated Debt Securities of such series, at least one of such Paying Agents having offices or agencies in the Borough of Manhattan, The City of New York;



200FX&=8eN2TY=2s

(h) other than with respect to any redemption of the Subordinated Debt Securities pursuant to Section 11.08, whether or not such series of Subordinated Debt Securities are to be redeemable, in whole or in part, at the Company's option and, if so redeemable, the period or periods within which, the price or prices at which and the terms and conditions upon which, Subordinated Debt Securities of the series may be redeemed, including the date referred to in Section 11.08;

(i) the obligation, if any, of the Company to redeem or purchase Subordinated Debt Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which, and the terms and conditions upon which Subordinated Debt Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(j) if other than denominations of \$1,000 and any multiple thereof, the denominations in which Subordinated Debt Securities of the series in each applicable form shall be issuable;

(k) if other than the full principal amount thereof, the portion, or the manner of calculation of such portion, of the principal amount of Subordinated Debt Securities of the series which shall be payable upon a declaration of acceleration or acceleration of the Maturity thereof pursuant to Section 5.02, upon redemption of Subordinated Debt Securities of any series which are redeemable before their Stated Maturity, or which the Trustee shall be entitled to file and prove a claim pursuant to Section 5.04;

(l) if Additional Amounts, pursuant to Section 10.04, will not be payable;

(m) if other than Dollars, provisions, if any, for the Subordinated Debt Securities of the series to be denominated, and payments thereon to be made, in Foreign Currencies and specifying the Place of Payment and the manner of payment thereon and any other terms with respect thereto;

(n) if other than the coin or currency in which the Subordinated Debt Securities of that series are denominated, the coin or currency in which payment of the principal of (and premium, if any) or interest, if any, on the Subordinated Debt Securities of such series shall be payable;

(o) if the principal of (and premium, if any) or interest, if any, on the Subordinated Debt Securities of such series are to be payable, at the election of the Company or a Holder thereof, in a coin or currency other than that in which the Subordinated Debt Securities are denominated, the period or periods within which, and the terms and conditions upon which, such election may be made;

(p) whether the Subordinated Debt Securities of the series shall be issued in whole or in part in the form of one or more Global Securities and the initial Holder with respect to such Global Security or Subordinated Debt Securities;



(q) if the Subordinated Debt Securities of such series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Subordinated Debt Security of such series or otherwise) only upon receipt of certain certificates or other documents or satisfaction of other conditions, then the form and terms of such certificates, documents or conditions;

(r) if the amounts of payments of principal of (and premium, if any) or interest, if any, on the Subordinated Debt Securities of the series may be determined with reference to an index or are otherwise not fixed on the original issue date thereof, the manner in which such amounts shall be determined and the Calculation Agent, if any, who shall be appointed and authorized to calculate such amounts;

(s) any other Events of Default or covenants with respect to the Subordinated Debt Securities of such series;

(t) if other than as provided in Article 12, the subordination terms with respect to the Subordinated Debt Securities of the series;

(u) the forms of Subordinated Debt Securities of the series;

(v) any other terms of the series (which terms shall not be inconsistent with the provisions of this Subordinated Debt Securities Indenture, except as permitted by Section 9.01(d)); and

(w) the Trustee for such series of Subordinated Debt Securities who shall also be named in an indenture supplemental hereto for a particular series of Subordinated Debt Securities if the Trustee for such series is not the Trustee named in the first paragraph of this Subordinated Debt Securities Indenture.

All Subordinated Debt Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to such action or in any such Officer's Certificate or indenture supplemental hereto.

If the forms of Subordinated Debt Securities of any series, or any of the terms thereof, are established by action taken pursuant to a Board Resolution, a copy of the Board Resolution in respect thereof shall be delivered to the Trustee at or prior to the delivery of the Company Order pursuant to Section 3.03 for the authentication and delivery of such Subordinated Debt Securities.

Section 3.02. *Denominations.* The Subordinated Debt Securities of each series shall be issuable in such denominations as shall be specified as contemplated by Section 3.01. In the absence of any such specification with respect to Subordinated Debt Securities of any series, the Subordinated Debt Securities of each series shall be issuable in denominations of \$1,000 each and any integral multiple thereof. Unless otherwise specified in accordance with Section 3.01, any Global Security issued and delivered to the Holder shall be issued in the form of units with each \$1,000 principal amount of such Global Security constituting one unit.



200FX&=8eN2WkiHsz

Section 3.03. *Execution, Authentication, Delivery and Dating.* The Subordinated Debt Securities shall be executed on behalf of the Company by any one of the representatives of the Company authorized to do so by Board Resolution or by any member of the Board of Directors. The signature of any of these authorized representatives on the Subordinated Debt Securities may be manual or facsimile. Subordinated Debt Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officer of the Company shall bind the Company, notwithstanding that such individual has ceased to hold such office prior to the authentication and delivery of such Subordinated Debt Securities.

At any time and from time to time after the execution and delivery of this Subordinated Debt Securities Indenture, the Company may deliver Subordinated Debt Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Subordinated Debt Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Subordinated Debt Securities. In authenticating such Subordinated Debt Securities and accepting the additional responsibilities under this Subordinated Debt Securities Indenture in relation to such Subordinated Debt Securities the Trustee shall be entitled to receive, and (subject to Section 6.01) shall be fully protected in relying upon an Opinion of Counsel stating that the form and terms thereof have been established in conformity with the provisions of this Subordinated Debt Securities Indenture.

If all the Subordinated Debt Securities of any series are not to be issued at one time, it shall not be necessary to deliver an Opinion of Counsel and an Officer's Certificate at the time of issuance of each Subordinated Debt Security, but such opinion and certificate, with appropriate modifications, shall be delivered at or before the time of issuance of the first Subordinated Debt Security of such series. After any such first delivery, any separate request by the Company that the Trustee authenticate Subordinated Debt Securities of such series for original issue will be deemed to be a certification by the Company that all conditions precedent provided for in this Subordinated Debt Securities Indenture relating to authentication and delivery of such Subordinated Debt Securities continue to have been complied with.

The Trustee shall not be required to authenticate such Subordinated Debt Securities if the issue of such Subordinated Debt Securities pursuant to this Subordinated Debt Securities Indenture will affect the Trustee's own rights, duties or immunities under the Subordinated Debt Securities and this Subordinated Debt Securities Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Each Subordinated Debt Security shall be dated the date of its authentication.

No Subordinated Debt Security appertaining thereto shall be entitled to any benefit under this Subordinated Debt Securities Indenture or be valid or obligatory for any purpose unless there appears on such Subordinated Debt Security a certificate of authentication substantially in the form provided for herein executed by or on behalf of the Trustee by manual signature, and such certificate upon any Subordinated Debt



Security shall be conclusive evidence, and the only evidence, that such Subordinated Debt Security has been duly authenticated and delivered hereunder and that such Subordinated Debt Security is entitled to the benefits of this Subordinated Debt Securities Indenture. Notwithstanding the foregoing, if any Subordinated Debt Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Subordinated Debt Security to the Trustee for cancellation as provided in Section 3.09, for all purposes of this Subordinated Debt Securities Indenture, such Subordinated Debt Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefit of this Subordinated Debt Securities Indenture.

Section 3.04. *Temporary Subordinated Debt Securities.* Pending the preparation of definitive Subordinated Debt Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Subordinated Debt Securities, substantially of the tenor of the definitive Subordinated Debt Securities in lieu of which they are issued, and, if applicable, which Subordinated Debt Securities may be printed, lithographed, typewritten, photocopied or otherwise produced. Temporary Subordinated Debt Securities shall be issuable as Subordinated Debt Securities in registered form in any authorized denomination, and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Subordinated Debt Securities may determine, all as evidenced by such execution.

If temporary Subordinated Debt Securities of any series are issued, the Company will cause, if so required by the terms of such temporary Subordinated Debt Securities, definitive Subordinated Debt Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Subordinated Debt Securities of such series, the temporary Subordinated Debt Securities of such series shall be exchangeable for definitive Subordinated Debt Securities of such series containing identical terms and provisions upon surrender of the temporary Subordinated Debt Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Subordinated Debt Securities of any series the Company shall execute, and the Trustee shall authenticate and deliver in exchange therefor, a like aggregate principal amount of definitive Subordinated Debt Securities of the same series of authorized denominations containing identical terms and provisions. Until so exchanged, unless otherwise provided therein or in a supplemental indenture relating thereto, the temporary Subordinated Debt Securities of any series shall in all respects be entitled to the same benefits (but shall be subject to all the limitations of rights) under this Subordinated Debt Securities Indenture as definitive Subordinated Debt Securities of such series.

Section 3.05. *Registration, Registration of Transfer and Exchange.* (a) *Global Securities.* This Section 3.05(a) shall apply to Global Securities unless otherwise specified, as contemplated by Section 3.01.

Except as otherwise specified as contemplated by Section 3.01 hereof, the Subordinated Debt Securities shall be initially issued and represented by one or more Global Securities in registered form which shall be authenticated as contemplated by this Subordinated Debt Securities Indenture.





200FX&=eN2ays\$\*

Each Global Security authenticated under this Subordinated Debt Securities Indenture shall be registered in the name of the Depository designated for such Global Security or a nominee thereof and delivered to such Depository or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Subordinated Debt Security for all purposes of this Subordinated Debt Securities Indenture. Except as otherwise specified as contemplated by Section 3.01 hereof, each Global Security authenticated under this Subordinated Debt Securities Indenture shall be initially registered in the name of DTC or its nominee only.

Unless the Global Security is presented by an authorized representative of the Holder to the Company or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of a nominee of the Holder and any payment is made to such nominee, any transfer, pledge or other use of the Global Security for value or otherwise shall be wrongful since the registered owner of such Global Security, the nominee of the Holder, has an interest in such Global Security.

Except as otherwise specified as contemplated by Section 3.01 hereof, any Global Security shall be exchangeable for definitive Subordinated Debt Securities only as provided in this paragraph. A Global Security shall be exchangeable pursuant to this Section only (i) if the relevant Depository notifies the Trustee that it is unwilling or unable to continue to act as Depository and a successor depository is not appointed by the Trustee within 120 days of such notification, (ii) if, in the event of a winding-up of the Company, the Company fails to make a payment on the Subordinated Debt Securities when due, or (iii) at any time if the Company at its option and in its sole discretion determines that the Global Securities of a particular series should be exchanged for definitive Subordinated Debt Securities of that series. Any Global Security that is exchangeable pursuant to the preceding sentence shall be exchangeable for, unless otherwise specified or contemplated by Section 3.01, definitive Subordinated Debt Securities bearing interest (if any) at the same rate or pursuant to the same formula, having the same date of issuance, the same date or dates from which such interest shall accrue, the same Interest Payment Dates on which such interest shall be payable or the manner of determination of such Interest Payment Dates, redemption provisions, if any, specified currency and other terms and of differing denominations aggregating a like amount as the Global Security so exchangeable. Definitive Subordinated Debt Securities shall be registered in the names of the owners of the beneficial interests in such Global Securities as such names are from time to time provided by the Holder to the Trustee.

Any Global Security that is exchangeable pursuant to the preceding paragraph, unless otherwise specified as contemplated by Section 3.01, shall be exchangeable for Subordinated Debt Securities issuable in authorized denominations of a like aggregate principal amount and tenor.

No Global Security may be transferred except as a whole by the Holder to a nominee of the Holder or by the Holder or any such nominee to a successor of the Holder



or a nominee of such successor. Except as provided above, owners solely of beneficial interests in a Global Security shall not be entitled to receive physical delivery of Subordinated Debt Securities in definitive form and will not be considered the holders thereof for any purpose under this Subordinated Debt Securities Indenture.

In the event that a Global Security is surrendered for redemption in part pursuant to Section 11.07, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Global Security, without service charge, a new Global Security in a denomination equal to and in exchange for the unredeemed or unexchanged portion of the principal of the Global Security so surrendered.

The Agent Members and any other beneficial owners shall have no rights under this Subordinated Debt Securities Indenture with respect to any Global Security held on their behalf by a Holder, and such Holder may be treated by the Company, the Trustee, and any agent of the Company or the Trustee, as the owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall (i) prevent the Company, the Trustee, or any agent of the Company or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by a Holder or (ii) impair, as between any such Holder or other clearance service and its Agent Members and Holders, the operation of customary practices governing the exercise of the rights of a holder of any security, including without limitation the granting of proxies or other authorization of participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under this Subordinated Debt Securities Indenture.

In connection with any exchange of interests in a Global Security for definitive Subordinated Debt Securities of another authorized form, as provided in this Section 3.05, then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Company shall deliver to the Trustee definitive Subordinated Debt Securities in aggregate principal amount equal to the principal amount of such Global Security or the portion to be exchanged executed by the Company. On or after the earliest date on which such interests may be so exchanged, such Global Security shall be surrendered by the Holder to the Trustee, as the Company's agent for such purpose, to be exchanged, in whole or from time to time in part, for definitive Subordinated Debt Securities without charge (in which case the Company or Trustee may require payment of any taxes or governmental charges arising) and the Trustee shall authenticate and deliver, in exchange for each portion of such Global Security, an equal aggregate principal amount of definitive Subordinated Debt Securities of authorized denominations as the portion of such Global Security to be exchanged. Any Global Security that is exchangeable pursuant to this Section 3.05 shall be exchangeable for Subordinated Debt Securities issuable in the denominations specified as contemplated by Section 3.01 and registered in such names as the Holder of such Global Security shall direct. If a definitive Subordinated Debt Security is issued in exchange for any portion of a Global Security after the close of business at the office or agency where such exchange occurs on any record date and before the opening of business at such office or agency on the relevant Interest Payment Date, interest will not be payable on such Interest Payment Date in respect of such definitive Subordinated Debt Security, but will be payable on such Interest Payment Date only to the Person to whom payments of interest in respect of such portion of such Global Security are payable.



A Depositary may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a holder is entitled to take under this Subordinated Debt Securities Indenture with respect to the Subordinated Debt Securities.

(b) Except as otherwise specified pursuant to Section 3.01, Subordinated Debt Securities of any series may only be exchanged for a like aggregate principal amount of Subordinated Debt Securities of such series of other authorized denominations containing identical terms and provisions. Subordinated Debt Securities to be exchanged shall be surrendered at an office or agency of the Company designated pursuant to Section 10.02 for such purpose, and the Company shall execute, and the Trustee shall authenticate and deliver, in exchange therefor the Subordinated Debt Security or Subordinated Debt Securities of the same series which the Holder making the exchange shall be entitled to receive.

Except as otherwise specified pursuant to Section 3.01, the Company shall cause to be kept in the principal corporate trust office of the Trustee a register (the register maintained in such office and in any other office or agency of the Company in a Place of Payment being herein sometimes collectively referred to as the “**Subordinated Debt Security Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Subordinated Debt Securities and of transfers of such Subordinated Debt Securities. Except as otherwise specified pursuant to Section 3.01, the Trustee is hereby appointed “**Subordinated Debt Security Registrar**” for the purpose of registering Subordinated Debt Securities and transfers of Subordinated Debt Securities as herein provided.

Subordinated Debt Securities shall be transferable only on the Subordinated Debt Security Register. Upon surrender for registration of transfer of any Subordinated Debt Security of any series, together with the form of transfer endorsed on it, duly completed and executed at an office or agency of the Company designated pursuant to Section 10.02 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver to the address specified in the form of transfer, within three Business Days, in the name of the designated transferee or transferees, one or more new Subordinated Debt Securities of the same series of any authorized denominations containing identical terms and provisions, of a like aggregate principal amount. If only part of a Subordinated Debt Security is transferred, a new Subordinated Debt Security of an aggregate principal amount equal to the amount not being transferred shall be executed by the Company, and authenticated and delivered by the Trustee to the transferor, in the name of the transferor, within three Business Days after the Trustee acting as Paying Agent pursuant to Section 10.02 receives the Subordinated Debt Security. The new Subordinated Debt Security will be delivered to the transferor by uninsured post at the risk of the transferor to the address of the transferor appearing in the Subordinated Debt Security Register. A new Subordinated Debt Security of an aggregate principal amount equal to the amount being transferred shall be delivered by the Trustee to the transferee, in the name of the



200FX&=8eN2eQWcLc

transferee, within three Business Days after the Trustee acting as Paying Agent pursuant to Section 10.02 receives the Subordinated Debt Security. The new Subordinated Debt Security will be delivered to the transferee by uninsured post at the risk of the transferee to the address of the transferee specified in the form of transfer.

All Subordinated Debt Securities issued upon any registration of transfer or exchange of Subordinated Debt Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Subordinated Debt Securities Indenture, as the Subordinated Debt Securities surrendered upon such registration of transfer or exchange.

Every Subordinated Debt Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Subordinated Debt Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Subordinated Debt Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Subordinated Debt Securities, other than exchanges pursuant to Section 3.04, Section 9.06 or Section 11.07 not involving any transfer.

The Company shall not be required (i) to issue, register the transfer of or exchange any Subordinated Debt Security of any series during a period beginning at the opening of business 15 days before the day of the giving of a notice of redemption of Subordinated Debt Securities of such series selected for redemption under Section 11.03 and ending at the close of business on the day of the giving of such notice, or (ii) to register the transfer of or exchange any Subordinated Debt Security so selected for redemption in whole or in part, except the unredeemed portion of any Subordinated Debt Securities being redeemed in part.

Section 3.06. *Mutilated, Destroyed, Lost and Stolen Subordinated Debt Securities.* If any mutilated Subordinated Debt Security (including any Global Security) is surrendered to the Trustee, the Company may execute and the Trustee shall, in the case of a Subordinated Debt Security, authenticate and deliver in exchange therefor a new Subordinated Debt Security of the same series containing identical terms and provisions and of like amount, and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Subordinated Debt Security (including any Global Security) and (ii) such security or indemnity as may be required by them to save each of them and any agent of any of them harmless, then, in the absence of notice to the Company or the Trustee that such Subordinated Debt Security has been acquired by a bona fide purchaser, the Company shall execute and upon the Company's request the Trustee shall authenticate and deliver in lieu of any such destroyed, lost or stolen



Subordinated Debt Security a new Subordinated Debt Security of the same series containing identical terms and provisions and of like amount, and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Subordinated Debt Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Subordinated Debt Security, pay such Subordinated Debt Security.

Upon the issuance of any new Subordinated Debt Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Subordinated Debt Security of any series issued pursuant to this Section in lieu of any destroyed, lost or stolen Subordinated Debt Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Subordinated Debt Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Subordinated Debt Securities Indenture equally and proportionately with any and all other Subordinated Debt Securities of that series duly issued hereunder.

The provisions of this Section, as amended or supplemented pursuant to this Subordinated Debt Securities Indenture, are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Subordinated Debt Securities.

Section 3.07. *Payment; Interest Rights and Rights to Additional Amounts Preserved.* Except as otherwise provided as contemplated by Section 3.01 with respect to any series of Subordinated Debt Securities, interest, if any, and any Additional Amounts on any Subordinated Debt Securities which is payable, and is paid or duly provided for, on any Interest Payment Date shall be paid to the Holder (including through a Paying Agent of the Company designated pursuant to Section 3.01 for collection by the Holder) at the close of business on the Regular Record Date.

In the case of Subordinated Debt Securities where payment is to be made in Dollars, payment at any Paying Agent's office outside The City of New York will be made in Dollars by check drawn on, or, at the request of the Holder, by transfer to a Dollar account maintained by the payee with, a bank in The City of New York.

In the case of Subordinated Debt Securities where payment is to be made in a Foreign Currency, payment will be made as established pursuant to Section 3.01.



Any interest on and any Additional Amounts with respect to any Subordinated Debt Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date is herein called “**Default Interest**”. Default Interest on any Subordinated Debt Security of any series shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue then of having been such Holder, and such Default Interest may be paid by the Company, at its election, in each case, as provided in clause (a) or (b) below:

(a) The Company may elect to make payment of any Default Interest to the Persons in whose names the Subordinated Debt Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Default Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Default Interest proposed to be paid on each Subordinated Debt Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Default Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Default Interest as in this clause provided. Thereupon the Company shall fix a Special Record Date for the payment of such Default Interest in respect of such Subordinated Debt Securities of such series which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after it delivers to the Trustee notice of the proposed payment. The Company shall promptly notify the Trustee of such Special Record Date and, in the name and at the expense of the Company, the Trustee shall cause notice of the proposed payment of such Default Interest and the Special Record Date therefor to be given in the manner and to the extent provided in Section 1.06, not less than 10 days prior to such Special Record Date. The Trustee shall, at the instruction of the Company, in the name and at the expense of the Company, cause a similar notice to be published in an Authorized Newspaper of general circulation in the Borough of Manhattan, The City of New York, but such publication shall be not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Default Interest on the Subordinated Debt Securities of such series and the Special Record Date therefor having been so given, such Default Interest on the Subordinated Debt Securities of such series shall be paid in the case of Subordinated Debt Securities to the Persons in whose names such Subordinated Debt Securities (or their respective Predecessor Securities) are registered in the Subordinated Debt Security Register at the close of business on the Special Record Date, and such Default Interest shall no longer be payable pursuant to the following clause (b); or

(b) The Company may make payment of any Default Interest on the Subordinated Debt Securities of any series to the Persons in whose names the Subordinated Debt Securities are registered in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Subordinated Debt Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Subordinated Debt Security delivered under this Subordinated Debt Securities Indenture upon registration of transfer of or in exchange for or in lieu of any other Subordinated Debt Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Subordinated Debt Security.



Section 3.08. *Persons Deemed Owners.* Prior to due presentation of a Subordinated Debt Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Subordinated Debt Security is registered as the owner of such Subordinated Debt Security for the purpose of receiving payment of principal of (and premium, if any) and interest, if any, on and any Additional Amounts with respect to such Subordinated Debt Security and for all other purposes whatsoever, whether or not such Subordinated Debt Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary. The aggregate principal amount of the Subordinated Debt Securities of any series shall be reflected on the books and records of the Subordinated Debt Security Registrar.

None of the Company, the Trustee, the Paying Agent or the Subordinated Debt Security Registrar shall have any responsibility or obligation to any beneficial owner in a Global Security, an Agent Member or other Person with respect to the accuracy of the records of the Depository or its nominee or of any Agent Member, with respect to any ownership interest in the Subordinated Debt Securities or with respect to the delivery to any Agent Member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Subordinated Debt Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Subordinated Debt Securities and this Subordinated Debt Securities Indenture shall be given or made only to or upon the order of the registered holders (which shall be the Depository or its nominee in the case of the Global Security). The rights of beneficial owners in the Global Security shall be exercised only through the Depository subject to the applicable procedures. The Company, the Trustee, the Paying Agent and the Subordinated Debt Security Registrar shall be entitled to rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners. The Company, the Trustee, the Paying Agent and the Subordinated Debt Security Registrar shall be entitled to deal with the Depository, and any nominee thereof, that is the registered holder of any Global Security for all purposes of this Subordinated Debt Securities Indenture relating to such Global Security (including the payment of principal, premium, if any, and interest and additional amounts, if any, and the giving of instructions or directions by or to the owner or holder of a beneficial ownership interest in such Global Security) as the sole holder of such Global Security and shall have no obligations to the beneficial owners thereof. None of the Company, the Trustee, the Paying Agent or the Subordinated Debt Security Registrar shall have any responsibility or liability for any acts or omissions of the Depository with respect to such Global Security, for the records of any such Depository, including records in respect of beneficial ownership interests in respect of any such Global Security, for any transactions between the Depository and any Agent Member or between or among the Depository, any such Agent Member and/or any holder or owner of a beneficial interest in such Global Security, or for any transfers of beneficial interests in any such Global Security.



Notwithstanding the foregoing, with respect to any Global Security, nothing herein shall prevent the Company, the Trustee, or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by any Depository (or its nominee), as a Holder, with respect to such Global Security or shall impair, as between such Depository and owners of beneficial interests in such Global Security, the operation of customary practices governing the exercise of the rights of such Depository (or its nominee) as Holder of such Global Security.

Each Holder and beneficial owner that acquires its Subordinated Debt Security in the secondary market shall be deemed to acknowledge and agree to be bound by and consent to the same provisions specified in this Subordinated Debt Securities Indenture and the Subordinated Debt Securities to the same extent as the Holders and beneficial owners of the Subordinated Debt Securities that acquire the Subordinated Debt Securities upon their initial issuance, including, without limitation, with respect to the acknowledgement and agreement to be bound by and consent to the terms of the Subordinated Debt Securities, including in relation to the Bail-in Power.

Section 3.09. *Cancellation.* All Subordinated Debt Securities surrendered for payment, redemption, registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Subordinated Debt Securities previously authenticated and delivered hereunder and all Subordinated Debt Securities so delivered shall be promptly cancelled by the Trustee. No Subordinated Debt Securities shall be authenticated in lieu of or in exchange for any Subordinated Debt Securities cancelled as provided in this Section, except as expressly permitted by the provisions of the Subordinated Debt Securities of any series or pursuant to the provisions of this Subordinated Debt Securities Indenture. The Trustee shall deliver to the Company all cancelled Subordinated Debt Securities held by the Trustee.

Section 3.10. *Computation of Interest.* Except as otherwise specified pursuant to Section 3.01 for Subordinated Debt Securities of any series, payments of interest on the Subordinated Debt Securities of each series shall be computed on the basis of a 360- day year of twelve 30-day months.

Section 3.11. *CUSIP Numbers.* The Company in issuing any series of the Subordinated Debt Securities may use “**CUSIP**”, “**ISIN**” and/or “**Common Code**” and/or other similar numbers (if then generally in use) or any successor to such numbers and thereafter with respect to such series, the Trustee shall use “**CUSIP**”, “**ISIN**” and/or “**Common Code**” and/or other similar numbers or successor numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Subordinated Debt Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Subordinated Debt Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the “**CUSIP**”, “**ISIN**” and/or “**Common Code**” and/or other similar numbers or successor numbers.





Section 3.12. *Additional Subordinated Debt Securities.* The Company may, from time to time, without the consent of the Holders of the Subordinated Debt Securities of any series, issue additional Subordinated Debt Securities (“**Additional Subordinated Debt Securities**”) of one or more of the series of Subordinated Debt Securities issued under this Subordinated Debt Securities Indenture, having the same ranking and same interest rate, Maturity, redemption terms and other terms, except for the price to the public, original interest accrual date, issue date and first Interest Payment Date, as the Subordinated Debt Securities; *provided*, however, that such Additional Subordinated Debt Securities will not have the same CUSIP, ISIN or other identifying number as the Outstanding Subordinated Debt Securities of such series unless the Additional Subordinated Debt Securities are fungible with the Outstanding Subordinated Debt Securities for U.S. federal income tax purposes. Any such Additional Subordinated Debt Securities, together with the Subordinated Debt Securities of the applicable series, will constitute a single series of Subordinated Debt Securities under this Subordinated Debt Securities Indenture and shall be included in the definition of “Subordinated Debt Securities” in this Subordinated Debt Securities Indenture where the context requires.

Section 3.13. *Correction of Minor Defects in or Amendment of Subordinated Debt Securities.* If, after issuance of any Subordinated Debt Security (including any Global Security), the Company or the Trustee shall become aware of any ambiguity, defect or inconsistency in any term of a Subordinated Debt Security or Global Security, as the case may be, or, with respect to any Subordinated Debt Security (including any Global Security) issued on or after the date hereof, the Company and the Trustee agree to amend such Subordinated Debt Security as contemplated by Section 9.01(l), the parties hereto shall provide for the execution, authentication, delivery and dating of one or more replacement Subordinated Debt Securities or Global Securities, as the case may be, pursuant to Section 3.03 hereto.

Section 3.14. *Payments Subject to Fiscal Laws.* All payments in respect of the Subordinated Debt Securities will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment (including FATCA, any regulations or agreements thereunder, any official interpretation thereof, any intergovernmental agreements with respect thereto, or any law implementing an intergovernmental agreement or any regulations or official interpretations relating thereto), but without prejudice to the provisions of Section 10.04.



ARTICLE 4  
SATISFACTION AND DISCHARGE

Section 4.01. *Satisfaction and Discharge of Subordinated Debt Securities Indenture.* This Subordinated Debt Securities Indenture shall upon Company Request, cease to be of further effect with respect to Subordinated Debt Securities of any series (except as to any surviving rights of registration of transfer or exchange of Subordinated Debt Securities of such series herein expressly provided for), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Subordinated Debt Securities Indenture with respect to the Subordinated Debt Securities of such series when:

(a) either

(i) all Subordinated Debt Securities of such series theretofore authenticated and delivered (other than (A) Subordinated Debt Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.06 and (B) Subordinated Debt Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.03) have been delivered to the Trustee for cancellation; or

(ii) all such Subordinated Debt Securities not theretofore delivered to the Trustee for cancellation:

(A) have become due and payable or will become due and payable at their Stated Maturity within one year, or

(B) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company has deposited or caused to be deposited with the Trustee, as trust funds in trust for the purpose, an amount in cash, or U.S. Government Obligations (with respect to Subordinated Debt Securities denominated in Dollars) or Foreign Government Securities (with respect to Subordinated Debt Securities denominated in the same Foreign Currency) maturing, in the case of (A) and (B) above, as to principal and interest, if any, in such amounts and at such times as will ensure the availability of cash sufficient without reinvestment, as confirmed by a letter from an internationally recognized firm of independent public accountants (which shall not be subject to the requirements of Section 1.02) in the form of an agreed-upon procedures letter in its then customary form, to pay, satisfy and discharge all claims with respect to such Subordinated Debt Securities not theretofore delivered to the Trustee for cancellation, in the case of (A) and (B) above, for principal (and premium, if any) and accrued interest, if any, to the date of such deposit (in the case of Subordinated Debt Securities which have become due and payable) or to the Redemption Date, as the case may be;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company with respect to the Subordinated Debt Securities of such series; and

(c) the Company has delivered to the Trustee an Officer's Certificate, and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Subordinated Debt Securities Indenture with respect to the Subordinated Debt Securities of such series have been complied with.



In addition, upon the exercise of a Bail-in Power with respect to a series of Subordinated Debt Securities which results in the cancellation, or the conversion into other securities, of all the Amounts Due on such Subordinated Debt Securities or such Subordinated Debt Securities otherwise ceasing to be outstanding, this Subordinated Debt Securities Indenture shall be satisfied and discharged as to such series.

Notwithstanding any satisfaction and discharge of this Subordinated Debt Securities Indenture, the obligations of the Company to the Trustee under Section 6.08, the obligations of the Trustee to any Authenticating Agent under Section 6.15 and, if cash, U.S. Government Obligations and/or Foreign Government Securities shall have been deposited with the Trustee pursuant to subclause 4.01(a)(ii) of clause 4.01(a) of this Section, the obligations of the Trustee under Section 4.02 and the last paragraph of Section 10.03 shall survive such satisfaction and discharge, including any termination under any bankruptcy law.

Section 4.02. *Defeasance and Covenant Defeasance.* (a) If, pursuant to Section 3.01, provision is made for either or both of (i) defeasance of the Subordinated Debt Securities of or within a series under subsection (b) of this Section 4.02 or (ii) covenant defeasance of the Subordinated Debt Securities of or within a series under subsection (c) of this Section 4.02, then such provisions, together with the other provisions of this Section 4.02 (with such modifications thereto as may be specified pursuant to Section 3.01 with respect to any Subordinated Debt Securities), shall be applicable to such Subordinated Debt Securities, and the Company may at its option by Company Order, at any time, with respect to such Subordinated Debt Securities elect to have Section 4.02(b) (if applicable) or Section 4.02(c) (if applicable) be applied to such Outstanding Subordinated Debt Securities upon compliance with the conditions set forth below in this Section 4.02.

(b) Upon the Company's exercise of the above option applicable to this Section 4.02(b) with respect to any Subordinated Debt Securities of or within a series, the Company shall be deemed to have been discharged from its obligations with respect to such Outstanding Subordinated Debt Securities, on the date the conditions set forth in subsection (d) of this Section 4.02 are satisfied (hereinafter, "defeasance"). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by such Outstanding Subordinated Debt Securities, and such Subordinated Debt Securities shall thereafter be deemed to be "Outstanding" only for the purposes of subsection (e) of this Section 4.02 and the other Sections of this Subordinated Debt Securities Indenture referred to in clauses (i) and (ii) below, and the Company shall be deemed to have satisfied all of its other obligations under such Subordinated Debt Securities and this Subordinated Debt Securities Indenture insofar as such Subordinated Debt Securities are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of such Outstanding Subordinated Debt Securities to receive, solely from the trust fund described in subsection (d) of this Section 4.02 and as more fully set forth in such Section, payments in respect of the principal of (and premium, if any) and interest, if any, and Additional Amounts on such Subordinated Debt



200FX&=eN2fr%LV

Securities when such payments are due, (ii) the Company's obligations with respect to such Subordinated Debt Securities under Section 3.05, Section 3.06, Section 10.02 and Section 10.03 and with respect to the payment of Additional Amounts, if any, on such Subordinated Debt Securities as contemplated by Section 10.04, (iii) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (iv) this Section 4.02. The Company may exercise its option under this Section 4.02(b) notwithstanding the prior exercise of its option under subsection (c) of this Section 4.02 with respect to such Subordinated Debt Securities.

(c) Upon the Company's exercise of the above option applicable to this Section 4.02(c) with respect to any Subordinated Debt Securities of or within a series, the Company shall be released from, if specified pursuant to Section 3.01, their obligations under any other covenant, with respect to such Outstanding Subordinated Debt Securities on and after the date the conditions set forth in subsection (d) of this Section 4.02 are satisfied (hereinafter, "covenant defeasance"), and such Subordinated Debt Securities shall thereafter be deemed to be not "Outstanding" for the purposes of any direction, waiver, consent or declaration (and the consequences of any thereof) in connection with such other covenant, but shall continue to be deemed "Outstanding" for all other purposes hereunder. For this purpose, such covenant defeasance means that, with respect to such Outstanding Subordinated Debt Securities, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such Section or such other covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or such other covenant or by reason of reference in any such Section or such other covenant to any other provision herein or in any other document and such omission to comply shall not constitute a default or an Event of Default, but, except as specified above, the remainder of this Subordinated Debt Securities Indenture and such Subordinated Debt Securities shall be unaffected thereby.

(d) The following shall be the conditions to application of subsection (b) or (c) of this Section 4.02 to any Outstanding Subordinated Debt Securities of or within a series:

(i) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 6.11 who shall agree to comply with the provisions of this Section 4.02 applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Subordinated Debt Securities, (A) an amount in Dollars or in such Foreign Currency in which such Subordinated Debt Securities are then specified as payable at Stated Maturity, or (B) U.S. Government Obligations applicable to such Subordinated Debt Securities (determined on the basis of the Currency in which such Subordinated Debt Securities are then specified as payable at Stated Maturity) which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment of principal of (and premium, if any) and interest, if any, on such Subordinated Debt Securities, money in an amount, or (C) a combination thereof, in any case, in an amount, sufficient,



200FX&=eN2fukTLS

without consideration of any reinvestment of such principal and interest, in the opinion of an internationally recognized firm of Independent Public Accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, (y) the principal of (and premium, if any) and interest, if any, on such Outstanding Subordinated Debt Securities on the Stated Maturity of such principal or installment of principal or interest and Additional Amounts and (z) any mandatory sinking fund payments or analogous payments applicable to such Outstanding Subordinated Debt Securities on the day on which such payments are due and payable in accordance with the terms of this Subordinated Debt Securities Indenture and of such Subordinated Debt Securities.

(ii) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Subordinated Debt Securities Indenture or any other material agreement or instrument to which the Company is a party or by which it is bound.

(iii) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to such Subordinated Debt Securities shall have occurred and be continuing on the date of the establishment of such trust and, with respect to legal defeasance only, at any time during the period ending on the 91st day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until the expiration of such period).

(iv) In the case of an election under subsection (b) of this Section 4.02, the Company shall have delivered to the Trustee an opinion of counsel of recognized standing stating that (A) the Company has received from the Internal Revenue Service a letter ruling, or there has been published by the Internal Revenue Service a Revenue Ruling, or (B) since the date of execution of this Subordinated Debt Securities Indenture, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the beneficial owners of such Outstanding Subordinated Debt Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such legal defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such legal defeasance had not occurred.

(v) In the case of an election under subsection (c) of this Section 4.02, the Company shall have delivered to the Trustee an opinion of counsel of recognized standing to the effect that the beneficial owners of such Outstanding Subordinated Debt Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such covenant defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred.



(vi) Such defeasance or covenant defeasance shall not cause the Trustee to have a conflicting interest within the meaning of the Trust Indenture Act (assuming all relevant Securities are in default within the meaning of such Act).

(vii) Such defeasance or covenant defeasance shall not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended, and rules and regulations adopted by the Commission thereunder, unless such trust shall be registered under such Act or exempt from registration thereunder.

(viii) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance or covenant defeasance under subsection (b) or (c) of this Section 4.02 (as the case may be) have been complied with.

(ix) Notwithstanding any other provisions of this Section 4.02(d), such defeasance or covenant defeasance shall be effected in compliance with any additional or substitute terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 3.01.

(e) Subject to the provisions of the last paragraph of Section 10.03, all money and U.S. Government Obligations (or other property as may be provided pursuant to Section 3.01) (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 4.02(e), the "Trustee") pursuant to subsection (d) of Section 4.02 in respect of any Outstanding Subordinated Debt Securities of any series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Subordinated Debt Securities and this Subordinated Debt Securities Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Subordinated Debt Securities of all sums due and to become due thereon in respect of principal (and premium, if any) and interest and Additional Amounts, if any, but such money need not be segregated from other funds except to the extent required by law.

(f) Unless otherwise specified with respect to any Subordinated Debt Security pursuant to Section 3.01, if, after a deposit referred to in Section 4.02(d)(i) has been made, (i) the Holder of a Subordinated Debt Security in respect of which such deposit was made is entitled to, and does, elect pursuant to Section 3.01 or the terms of such Subordinated Debt Security to receive payment in a Currency other than that in which the deposit pursuant to Section 4.02(d)(i) has been made in respect of such Subordinated Debt Security, or (ii) a Conversion Event occurs in respect of the Foreign Currency in which the deposit pursuant to Section 4.02(d)(i) has been made, the indebtedness represented by such Subordinated Debt Security thereof shall be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of (and premium, if any), interest, if any, and Additional Amounts, if any, on such Subordinated Debt Security as the same becomes due out of the proceeds yielded by converting (from



time to time as specified below in the case of any such election) the amount or other property deposited in respect of such Subordinated Debt Security into the Currency in which such Subordinated Debt Security becomes payable as a result of such election or Conversion Event based on the applicable market exchange rate for such Currency in effect on the second Business Day prior to each payment date, except, with respect to a Conversion Event, for such Foreign Currency in effect at the time of the Conversion Event.

(g) Anything in this Section 4.02 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations (or other property and any proceeds therefrom) held by it as provided in subsection (d) of this Section 4.02 which, in the opinion of an internationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect a defeasance or covenant defeasance, as applicable, in accordance with this Section 4.02.

Section 4.03. *Application of Trust Money.* Subject to the provisions of the last paragraph of Section 10.03, all cash, U.S. Government Obligations and Foreign Government Securities deposited with the Trustee pursuant to Section 4.01 shall be held in trust and such cash and the proceeds from such U.S. Government Obligations and/or Foreign Government Securities shall be applied by it, in accordance with the provisions of the Subordinated Debt Securities of such series, and this Subordinated Debt Securities Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for the payment of which such cash, U.S. Government Obligations and/or Foreign Government Securities have been deposited with the Trustee.

Section 4.04. *Repayment to Company.* The Trustee, the Calculation Agent and any Paying Agent promptly shall pay to the Company upon Company Request any excess money, U.S. Government Obligations and/or Foreign Government Securities held by them at any time with respect to any series of Subordinated Debt Securities.

Section 4.05. *Reinstatement.* If the Trustee or any Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article 4 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Subordinated Debt Securities Indenture, the Subordinated Debt Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article 4 until such time as the Trustee or such Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article 4; provided, however, that, if the Company has made any payment of principal of or interest on any Subordinated Debt Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Subordinated Debt Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or such Paying Agent.



ARTICLE 5  
REMEDIES

Section 5.01. *Events of Default.* (a) Except as otherwise provided pursuant to Section 3.01, if any of the following events occurs and is continuing with respect to the Subordinated Debt Securities of any series it shall constitute an “Event of Default”:

(i) *Non-payment:* default is made in the payment of any interest or principal due in respect of the Subordinated Debt Securities of that series or any of them and such default continues for a period of seven days (or such other period as may be specified pursuant to Section 3.01).

(ii) *Winding up:* any order is made by any competent court or resolution passed for the winding up or dissolution of the Company (except in any such case for the purpose of reconstruction or a merger or amalgamation which has been previously approved by the holders of at least a majority of the outstanding principal amount of the Subordinated Debt Securities of that series or a merger with another institution in this case even without being approved by Holders of the Subordinated Debt Securities of such series, provided that any entity that survives or is created as a result of such merger is given a rating by an internationally recognized rating agency at least equal to the then current rating of the Company at the time of such merger).

(b) Neither a cancellation of the Subordinated Debt Securities of any series, a reduction, in part or in full, of the Amounts Due on the Subordinated Debt Securities of any series, the conversion thereof into another security or obligation of the Company or another person, in each case, as a result of the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Company, nor the exercise of any Bail-in Power by the Relevant Resolution Authority or any other resolution power with respect to such Subordinated Debt Securities, will be an Event of Default or otherwise constitute non-performance of a contractual obligation, or entitle the Holders of the Subordinated Debt Securities of such series to any remedies, which are hereby expressly waived.

(c) No exercise of a resolution tool or resolution power by the Relevant Resolution Authority or any action in compliance therewith shall constitute an Event of Default.

Section 5.02. *Enforcement of Remedies.* (a) If an Event of Default occurs as set forth in paragraph (a)(i) of Section 5.01, then the Trustee or the Holders of at least 25% in outstanding principal amount of the Subordinated Debt Securities of that series may institute proceedings for the winding up or dissolution of the Company but may take no further action in respect of such default.

(b) If an Event of Default occurs as set forth in paragraph (a)(ii) of Section 5.01, then the Trustee or the Holders of at least 25% in outstanding principal amount of the Subordinated Debt Securities of that series may declare such Subordinated Debt





200FX&=&eN2f@zILg

Securities of such series immediately due and payable whereupon the Subordinated Debt Securities of such series shall, when permitted by applicable Spanish insolvency law, become immediately due and payable at their Early Termination Amount together with all interest (if any) accrued thereon.

(c) Without prejudice to paragraphs (a)(i) and (a)(ii) of Section 5.01, the Trustee or the holders of at least 25% in outstanding principal amount of the Subordinated Debt Securities of any series may at their discretion and without further notice, institute such proceedings against the Company as they may think fit to enforce any obligation, condition or provision binding on the Company under the Subordinated Debt Securities of such series, provided that, except as provided in Section 5.01(a)(ii) winding-up above, the Company shall not as a consequence of such proceedings be obliged to pay any sum or sums representing or measured by reference to principal or interest in respect of the Subordinated Debt Securities of such series sooner than the same would otherwise have been payable by it or any damages.

Section 5.03. *Collection of Indebtedness and Suits for Enforcement by the Trustee.* (a) If an Event of Default with respect to the Subordinated Debt Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of the Subordinated Debt Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Subordinated Debt Securities Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy, including the institution of proceedings in Spain (but not elsewhere) for the winding-up of the Company, provided that, except as provided in (b) of Section 5.02 above, the Company shall not as a consequence of such proceedings be obliged to pay any sum or sums representing or measured by reference to principal or interest in respect of the Subordinated Debt Securities of such series sooner than the same would otherwise have been payable by it or any damages.

The Holders of Subordinated Debt Securities by their acceptance thereof will be deemed to have waived any right of set-off or counterclaim or combination of accounts with respect to the Subordinated Debt Securities or this Subordinated Debt Securities Indenture (or between the obligations under or in respect of any Subordinated Debt Securities and any liability owed by a Holder to the Company) that they might otherwise have against the Company, whether before or during a winding up of the Company.

Notwithstanding the foregoing, failure to make any payment in respect of a series of Subordinated Debt Securities shall not be an Event of Default in respect of such Subordinated Debt Securities if such payment is withheld or refused and the Company delivers an Opinion of Counsel concluding that such sums were not paid in order to comply with any fiscal or other law or regulation or with the order of any court of competent jurisdiction, provided, however, that the Trustee may by notice to the Company require the Company to take such action (including but not limited to proceedings for a declaration by a court of competent jurisdiction) as the Trustee may be advised in an Opinion of Counsel, upon which opinion the Trustee may conclusively rely,



200FX&=8eN2F%#&L; jzi.

is appropriate and reasonable in the circumstances to resolve such doubt, in which case the Company shall forthwith take and expeditiously proceed with such action and shall be bound by any final resolution of the doubt resulting therefrom. If any such action results in a determination that the relevant payment can be made without violating any applicable law, regulation or order then the provisions of the preceding sentence shall cease to have effect and the payment shall become due and payable on the expiration of 14 days or seven days after the Trustee gives written notice to the Company informing it of such resolution.

No recourse for the payment of the principal of (or premium, if any) or interest, if any, on any Subordinated Debt Security, or for any claim based thereon, covenant or agreement of the Company in this Subordinated Debt Securities Indenture, or in any Subordinated Debt Security, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, officer or director, past, present or future, of the Company or of any successor corporation of either the Company, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that to the extent lawful all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Subordinated Debt Securities Indenture and the issue of the Subordinated Debt Securities of a series.

Section 5.04. *Trustee May File Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition, winding-up or other judicial proceeding relative to the Company or to the property of the Company or such other obligor or their creditors (other than under or in connection with a scheme of amalgamation or reconstruction not involving bankruptcy or insolvency), the Trustee (irrespective of whether the principal of the Subordinated Debt Securities of such series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal (and premium, if any) or interest, if any) and Additional Amounts shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding; provided that the Company shall not, as a result of the bringing of such proceedings, be obliged to pay any sum representing or measured by reference to principal, premium or interest on the Subordinated Debt Securities sooner than the same would otherwise have been payable by it. In particular, the Trustee shall be authorized to collect and receive any moneys and other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder of a Subordinated Debt Security to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to such Holders or holders, to first pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due to the Trustee under Section 6.08.



Subject to Article 8 and Section 9.02, nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of any Subordinated Debt Security any plan of reorganization, arrangement, adjustment, or composition affecting any Subordinated Debt Securities or the rights of any Holder of any Subordinated Debt Security or to authorize the Trustee to vote in respect of the claim of any such Holder in any such proceeding.

The provisions of this Section 5.04 are subject to the provisions of Article 12.

Section 5.05. *Trustee May Enforce Claims Without Possession of Subordinated Debt Securities.* All rights of action and claims under this Subordinated Debt Securities Indenture or the Subordinated Debt Securities may be prosecuted and enforced by the Trustee without the possession of any of the Subordinated Debt Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel (subject, with regard to the Company, to the provisions of Article 12) be for the ratable benefit of the Holders of the Subordinated Debt Securities in respect of which such judgment has been recovered.

Section 5.06. *Application of Money Collected.* Any money collected by the Trustee pursuant to this Article or, after an Event of Default, any money or other property distributable in respect of the Company's obligations under this Subordinated Debt Securities Indenture, in respect of any series of Subordinated Debt Securities shall, subject to the provisions of Section 5.03 in relation to waiver and set-off and Article 12 in relation to subordination, be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (and premium, if any) or interest, if any, and Additional Amounts upon presentation of such Subordinated Debt Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

*FIRST:* To the payment of all amounts applicable to such series of Subordinated Debt Securities due and owing to the Trustee (including any predecessor Trustee) under Section 6.08;

*SECOND:* Subject to Section 12.01, to the payment of the amounts then due and unpaid for principal of (and premium, if any) and interest, if any, and Additional Amounts on such series of Subordinated Debt Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Subordinated Debt Securities for principal (and premium, if any) and interest, if any, respectively; and

*THIRD:* To the payment of the balance, if any, to the Company or any other Person or Persons legally entitled thereto.

Section 5.07. *Limitation on Suits.* No Holder of any Subordinated Debt Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Subordinated Debt Securities Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to Subordinated Debt Securities of the same series specifying such Event of Default and stating that such notice is a "**Notice of Default**" hereunder;



(b) the Holders of not less than 25% in aggregate principal amount of the Outstanding Subordinated Debt Securities of such series shall have made written request to the Trustee to institute proceedings in accordance with 5.02 to 5.05 hereof in respect of such Event of Default in its own name, as Trustee hereunder;

(c) such Holder of a Subordinated Debt Security has offered to the Trustee reasonable indemnity and/or security satisfactory to it (as determined by the Trustee in its sole discretion) against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Subordinated Debt Securities of such series;

it being understood and intended that no one or more Holders of Subordinated Debt Securities of a particular series shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Subordinated Debt Securities Indenture to affect, disturb or prejudice the rights of any other such Holders or holders, or to obtain or to seek to obtain priority or preference over any other such Holders or holders or to enforce any right under this Subordinated Debt Securities Indenture, except in the manner herein provided and for the equal and ratable benefit of all Holders of Subordinated Debt Securities of such series.

Section 5.08. *Unconditional Right of Holders to Receive Principal, Premium and Interest, if any, and Additional Amounts.* Subject to Article 12 in relation to subordination of Subordinated Debt Securities and notwithstanding any other provision in this Subordinated Debt Securities Indenture, the Holder of any Subordinated Debt Security shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and interest, if any, and Additional Amounts on such Subordinated Debt Security on the respective Stated Maturities as expressed in such Subordinated Debt Security (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 5.09. *Restoration of Rights and Remedies.* If the Trustee or any Holder of any Subordinated Debt Security has instituted any proceeding to enforce any right or remedy under this Subordinated Debt Securities Indenture and such proceeding has been



200FX&=8eN2gCBHLB

discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders of Subordinated Debt Securities shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders of Subordinated Debt Securities shall continue as though no such proceeding had been instituted.

Section 5.10. *Rights and Remedies Cumulative.* Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Subordinated Debt Securities in the last paragraph of Section 3.06 and without prejudice to Section 5.02, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Subordinated Debt Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not, subject as aforesaid, prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11. *Delay or Omission Not Waiver.* No delay or omission of the Trustee or of any Holder of any Subordinated Debt Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders of Subordinated Debt Securities may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders of Subordinated Debt Securities, as the case may be.

Section 5.12. *Control by Holders.* The Holders of a majority in aggregate principal amount of the Outstanding Subordinated Debt Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee hereunder, or exercising any trust or power conferred on the Trustee hereunder with respect to the Subordinated Debt Securities of such series, *provided that*

- (a) such direction shall not be in conflict with any rule of law or with this Subordinated Debt Securities Indenture or with the Subordinated Debt Securities of any series;
- (b) the Trustee shall not determine that the action so directed would be unjustly prejudicial to the Holders of any Subordinated Debt Securities of any series not taking part in such direction with respect to which the Trustee is acting as the Trustee; and
- (c) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Section 5.13. *Waiver of Past Defaults.* The Trustee may without prejudice to its rights in respect of any subsequent Event of Default from time to time and at any time



waive any Event of Default or authorize any proposed Event of Default by the Company provided that in its opinion the interests of the Holders shall not be materially prejudiced thereby and, provided, further, that the Trustee shall not exercise any powers conferred on it by this clause in contravention of any notice in writing to the Trustee made pursuant to Section 5.07 hereof but no such notice shall affect any waiver or authorization previously given or made. The Holders of not less than a majority in aggregate principal amount of the Outstanding Subordinated Debt Securities of any series may on behalf of the Holders of all the Subordinated Debt Securities of such series waive any past Event of Default hereunder with respect to such series and its consequences, except an Event of Default

(a) in the payment of the principal of (or premium, if any) or interest, if any, and Additional Amounts on any Subordinated Debt Security of such series, or

(b) in respect of a covenant or provision hereof which under Article 9 cannot be modified or amended without the consent of the Holder of each Outstanding Subordinated Debt Security of such series affected.

Upon any such waiver, such Event of Default shall cease to exist, and any Event of Default with respect to any series arising therefrom shall be deemed to have been cured and not to have occurred for every purpose of this Subordinated Debt Securities Indenture, but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

Section 5.14. *Undertaking for Costs.* All parties to this Subordinated Debt Securities Indenture agree, and each Holder of any Subordinated Debt Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Subordinated Debt Securities Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant to such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder or group of Holders holding in the aggregate more than 10% in principal amount of the Outstanding Subordinated Debt Securities of any series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest, if any, on any Subordinated Debt Security on or after the respective Stated Maturities expressed in such Subordinated Debt Security (or, in the case of redemption, on or after the Redemption Date).



200FX&=8eN2gJ7hsM

ARTICLE 6  
THE TRUSTEE

Section 6.01. *Certain Duties and Responsibilities.* (a) Except during the continuance of an Event of Default,

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Subordinated Debt Securities Indenture, and no implied covenants or obligations shall be read into this Subordinated Debt Securities Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Subordinated Debt Securities Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Subordinated Debt Securities Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts, statements, opinions or conclusions stated therein).

(b) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Subordinated Debt Securities Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(c) No provision of this Subordinated Debt Securities Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(i) this paragraph (c) shall not be construed to limit the effect of paragraphs (a) or (d) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Subordinated Debt Securities of any series, determined as provided herein, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Subordinated Debt Securities Indenture with respect to the Subordinated Debt Securities of such series.

(d) No provision of this Subordinated Debt Securities Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(e) Whether or not therein expressly so provided, every provision of this Subordinated Debt Securities Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.01.



Section 6.02. *Spanish Tax Procedures and Obligations of the Trustee.* In connection with each payment made on any Payment Date (as defined in Appendix 1 attached hereto) in respect of the issued Subordinated Debt Securities hereunder, the Trustee or Paying Agent shall comply with the tax procedures set forth in Appendix 1 hereto. The Trustee or Paying Agent shall have no duty or responsibility to comply with other Spanish tax obligations arising out of this Subordinated Debt Securities Indenture. The Company shall be responsible for the payment of any and all amounts due under the Subordinated Debt Securities. Therefore, the Trustee or Paying Agent shall not be liable for any amounts owed to any person due to its failure to properly comply with the tax procedures referred to in this Section 6.02 and Appendix 1 hereto, except such as may result from the negligence, willful misconduct or fraud of the Trustee or Paying Agent or any of its agents or employees. The Trustee or Paying Agent may request and rely conclusively upon any instructions from the Company in respect of any action necessary or required to be taken by the Trustee or Paying Agent pursuant to this Section 6.02 and Appendix 1 hereto; provided, however, in no event shall the Trustee or Paying Agent be required to expend or risk its own funds in the performance of any of its duties pursuant to this Section 6.02 and Appendix 1 hereto, or be obligated to take any legal or other action which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with acceptable indemnification and security.

Section 6.03. *Notice of Defaults.* Within 90 days after the occurrence of any Event of Default hereunder with respect to Subordinated Debt Securities of any series of which a Responsible Officer of the Trustee has received written notice of such Event of Default the Trustee shall transmit in the manner and to the extent provided in Section 1.06 to Holders of Subordinated Debt Securities of such series notice of such Event of Default hereunder of which the Trustee has received written notice, unless such Event of Default shall have been cured or waived; provided, however, that, the Trustee shall be protected in withholding such notice if it determines in good faith that the withholding of such notice is in the interest of the Holders of Subordinated Debt Securities of such series.

Section 6.04. *Certain Rights of Trustee.* Subject to the provisions of Section 6.01:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, Officer's Certificate, or any other certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other evidence of indebtedness or other paper or document (whether in its original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper party or parties;





(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order, as the case may be, and any resolution of the Board of Directors of the Company may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Subordinated Debt Securities Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate and/or an Opinion of Counsel;

(d) the Trustee may consult with counsel of its own selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in conclusive reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Subordinated Debt Securities Indenture at the request or direction of any of the Holders pursuant to this Subordinated Debt Securities Indenture, unless such Holders shall have offered to the Trustee reasonable security and/or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney; at the sole reasonable cost and expense of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation; provided that the Trustee shall not be entitled to such information which the Company is prevented from disclosing as a matter of law or contract;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(h) the Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Subordinated Debt Securities Indenture, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(i) anything in this Subordinated Debt Securities Indenture notwithstanding, in no event shall the Trustee be liable for special, indirect, punitive or consequential loss or



200FX&=eN2hihlsi

damage of any kind whatsoever (including but not limited to loss or profit), even if the Trustee has been advised as to the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in negligence or otherwise;

(j) the Trustee shall not be liable with respect to any Losses arising from action taken or omitted to be taken by it in good faith in accordance with any instruction or communication received by email from any person reasonably believed by the Trustee to be authorized by the Company to send such instruction or communication, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(k) the Trustee shall not be deemed to have notice of any Event of Default unless a Responsible Officer of the Trustee has received written notice of such an Event of Default at the Corporate Trust Office of the Trustee, and such notice references the Subordinated Debt Securities and/or this Subordinated Debt Securities Indenture;

(l) the Trustee shall not be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, strikes, work stoppages, civil or military disturbances, nuclear or natural catastrophes, fire, riot, embargo, loss or malfunctions of utilities, communications or computer (software and hardware) services, government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Subordinated Debt Securities Indenture;

(m) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder; and

(n) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Subordinated Debt Securities Indenture, which certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

Section 6.05. *Not Responsible for Recitals or Issuance of Subordinated Debt Securities.* The recitals contained herein and in the Subordinated Debt Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Subordinated Debt Securities Indenture or of the Subordinated Debt Securities, except that the Trustee represents and warrants that it has duly authorized, executed and delivered this Subordinated Debt Securities Indenture. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of Subordinated Debt Securities or the proceeds thereof. The Trustee shall not be responsible to make any calculation with respect to any matter under this Subordinated Debt Securities Indenture other than as specifically provided for herein.



The Trustee shall have no duty to monitor or investigate the Company's compliance with or the breach of, or cause to be performed or observed, any representation, warranty, or covenant, or agreement of any Person, other than the Trustee, made in this Subordinated Debt Securities Indenture.

No provision of this Subordinated Debt Securities Indenture shall be deemed to impose any duty or obligation on the Trustee to perform any act or acts, receive or obtain any interest in property or exercise any interest in property, or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, taxation or other consequences that, in the sole determination of the Trustee, are adverse to the Trustee, or in which the Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, to receive or obtain any such interest in property or to exercise any such right, power, duty or obligation.

Section 6.06. *May Hold Subordinated Debt Securities.* The Trustee, any Authenticating Agent, any Paying Agent, any Subordinated Debt Security Registrar and any Calculation Agent or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Subordinated Debt Securities and, subject to 6.09 and 6.14, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Subordinated Debt Security Registrar, Calculation Agent or such other agent.

Section 6.07. *Money Held in Trust.* Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

Section 6.08. *Compensation and Reimbursement.*

The Company agrees

(a) to pay to the Trustee from time to time compensation for all services rendered by it hereunder as agreed upon in writing by the Company from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, to reimburse the Trustee for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Subordinated Debt Securities Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as shall be determined by a court of competent jurisdiction to have been caused by its own negligence or bad faith; and

(c) to indemnify the Trustee (which for purposes of this subparagraph Section 6.08(c) shall be deemed to include its directors, officers, employees and agents) or any predecessor Trustee for, and to hold it harmless against, any and all loss, liability, claim, damage or expense (including legal fees and expenses) and taxes (other than taxes based



upon, measured by or determined by the income of the Trustee) incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder including the costs and expenses of defending itself against any claim (whether asserted by the Company, or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, or in connection enforcing the provisions of this Section, but excluding any tax liabilities of the Trustee in respect of its net profits.

In addition to, but without prejudice to its other rights under this Subordinated Debt Securities Indenture, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.01, the fees, costs and expenses (including the charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law.

The Trustee shall notify the Company in writing of the commencement of any action or claim in respect of which indemnification may be sought promptly after a Responsible Officer of the Trustee becomes aware of such commencement (provided that the failure to make such notification shall not affect the Trustee's rights hereunder) and the Company shall be entitled to participate in, and to the extent it shall wish, to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Trustee. If the Company and the Trustee are being represented by the same counsel and the Company has assumed the defense of the claim, the Trustee shall not be authorized to settle a claim without the written consent of the Company, which consent shall not be unreasonably withheld.

As security for the performance of the obligations of the Company under this Section, the Trustee shall have a senior lien to which the Subordinated Debt Securities are hereby made subordinate, upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (or premium, if any) or interest, if any, on the Subordinated Debt Securities.

"Trustee" for purposes of this Section shall include any predecessor Trustee; provided, however, that the negligence, willful misconduct or bad faith of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

The Trustee's rights to payment of its fees, reimbursement and indemnity under, and its lien provided for in, this Section 6.08 shall survive the payment in full of the Subordinated Debt Securities, the satisfaction and discharge of this Subordinated Debt Securities Indenture, the resignation or removal of the Trustee, the termination for any reason of this Subordinated Debt Securities Indenture and the exercise of the Bail-in Power and the other relevant resolution tools by the Relevant Resolution Authority.

Section 6.09. *Disqualification; Conflicting Interests.* If the Trustee has or shall acquire a conflicting interest within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, Section 310(b) of the Trust Indenture Act and this Subordinated Debt Securities Indenture.



200FX&=eN2D6Gns{

Section 6.10. *Corporate Trustee Required; Eligibility.* There shall at all times be a Trustee hereunder with respect to each series which shall be a Person organized and doing business under the laws of the United States, any State thereof or the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal or State or District of Columbia authority and having a corporate trust office or agency in the Borough of Manhattan, The City of New York, New York. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article 6.

Section 6.11. *Resignation and Removal; Appointment of Successor.* (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 6.12.

(b) The Trustee may resign at any time with respect to the Subordinated Debt Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.12 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Subordinated Debt Securities of such series.

(c) The Trustee may be removed at any time with respect to the Subordinated Debt Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Subordinated Debt Securities of such series delivered to the Trustee and to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.12 shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the Trustee may petition at the expense of the Company any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Subordinated Debt Securities of such series.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 6.09 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Subordinated Debt Security of the series as to which the Trustee has a conflicting interest for at least six months, or



(ii) the Trustee shall cease to be eligible under Section 6.10 and shall fail to resign after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Subordinated Debt Security for at least six months, or

(iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge, or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, or

(iv) the Trustee shall fail to perform its obligations to the Company under this Subordinated Debt Securities Indenture in any material respect,

then, in any such case, (A) the Company by a Board Resolution may remove the Trustee with respect to any or all series of Subordinated Debt Securities or (B) subject to Section 5.14 (and except in the case of subparagraph 6.11(d)(iv) above), any Holder who has been a bona fide Holder of a Subordinated Debt Security for at least six months (and, in the case of Section 6.11(d)(i) above, who is a Holder of a Subordinated Debt Security of the series as to which the Trustee has a conflicting interest) may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Subordinated Debt Securities and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Subordinated Debt Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Subordinated Debt Securities of such series (it being understood that any successor Trustee may be appointed with respect to the Subordinated Debt Securities of one or more or all of such series and at any time there shall be only one Trustee with respect to the Subordinated Debt Securities of any particular series), and shall comply with the applicable requirements of Section 6.12. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Subordinated Debt Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Subordinated Debt Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 6.12, become the successor Trustee with respect to the Subordinated Debt Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Subordinated Debt Securities of any series shall have been so appointed by the Company or the Holders of Subordinated Debt Securities of such series and accepted appointment in the manner hereinafter required by Section 6.12, any Holder who has been a bona fide Holder of a Subordinated Debt Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Subordinated Debt Securities of such series.



200FX&=&eN2DC#@Lz

(f) The Company shall give notice to Holders of each resignation and each removal of the Trustee with respect to the Subordinated Debt Securities of any series and each appointment of a successor Trustee with respect to the Subordinated Debt Securities of any series to the Holders in the manner and to the extent provided in Section 1.06. Each notice shall include the name of the successor Trustee with respect to the Subordinated Debt Securities of such series and the address of its Corporate Trust Office.

Section 6.12. *Acceptance of Appointment by Successor.* (a) In case of the appointment hereunder of a successor Trustee with respect to all Subordinated Debt Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges and subject to its lien provided for in Section 6.08, execute and deliver an instrument transferring to such successor Trustee, all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Subordinated Debt Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Subordinated Debt Securities of such series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (i) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Subordinated Debt Securities of such series to which the appointment of such successor Trustee relates, (ii) if the retiring Trustee is not retiring with respect to all Subordinated Debt Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Subordinated Debt Securities of such series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (iii) shall add to or change any of the provisions of this Subordinated Debt Securities Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Subordinated Debt Securities of such series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Subordinated Debt Securities of such series to which the appointment of such successor Trustee relates, subject to the lien provided for in Section 6.08.



(c) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (a) or (b) of this Section 6.12, as the case may be.

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article 6.

Section 6.13. *Merger, Conversion, Consolidation or Succession to Business.* Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such Person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Subordinated Debt Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Subordinated Debt Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Subordinated Debt Securities.

Section 6.14. *Preferential Collection of Claims.* If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Subordinated Debt Securities of a series), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

Section 6.15. *Appointment of Authenticating Agent.* The Trustee may at any time appoint an Authenticating Agent or Agents with respect to one or more series of Subordinated Debt Securities which shall be authorized to act on behalf of the Trustee to authenticate Subordinated Debt Securities of such series upon original issue, or issued upon exchange, registration of transfer or partial redemption thereof or in lieu of destroyed, lost or stolen Subordinated Debt Securities, and Subordinated Debt Securities so authenticated shall be entitled to the benefits of this Subordinated Debt Securities Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Subordinated Debt Securities Indenture to the authentication and delivery of Subordinated Debt Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation or national banking association organized and doing business under the laws of the United States, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by





Federal or State or District of Columbia authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.15, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any Person into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Person succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such Person shall be otherwise eligible under this Section 6.15, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 6.15, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall give notice to the Holders of Subordinated Debt Securities in the manner and to the extent provided in Section 1.06. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 6.15.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 6.15.

If an appointment with respect to one or more series is made pursuant to this Section, the Subordinated Debt Securities of such series may have endorsed thereon, in lieu of the Trustee's certificate of authentication, an alternate certificate of authentication in substantively the following form:

This is one of the Subordinated Debt Securities referred to in the within-mentioned Subordinated Debt Securities Indenture.

THE BANK OF NEW YORK MELLON, as Trustee

By: \_\_\_\_\_  
as Authenticating Agent

By: \_\_\_\_\_  
Authorized Signatory



Section 6.16. *Appointment of Additional Trustees.* The Company may appoint a Trustee for a particular series of Subordinated Debt Securities other than the Trustee named in the first paragraph of this Subordinated Debt Securities Indenture by executing and delivering an indenture supplemental hereto where such Trustee accepts such appointment as contemplated by Section 3.01(w) and Section 9.01(k) (it being understood that at any time there shall be only one Trustee with respect to the Subordinated Debt Securities of any particular series); provided that, at the time of such acceptance, such Trustee shall be qualified and eligible under this Article 6. Upon such acceptance, such Trustee shall be vested with all the rights, powers, trusts and duties of a Trustee under this Subordinated Debt Securities Indenture with respect to the Subordinated Debt Securities of such series.

Section 6.17. *Tax Withholding.* Any amounts to be paid by the Company on the Subordinated Debt Securities shall be paid net of any deduction or withholding imposed or required pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (or any law implementing such an intergovernmental agreement) (a “**FATCA Withholding Tax**”), and the Company shall not be required to pay Additional Amounts on account of any FATCA Withholding Tax.

Any Paying Agent shall be entitled to make a deduction or withholding from any payment which it makes under the Subordinated Debt Securities and this Subordinated Debt Securities Indenture for or on account of (i) any present or future taxes, duties or charges if and to the extent so required by any applicable law and (ii) any FATCA Withholding Tax (together, “**Applicable Law**”). In either case, the Paying Agent shall make any payment after a deduction or withholding has been made pursuant to Applicable Law and shall report to the relevant authorities the amount so deducted or withheld. In all cases, the Paying Agent shall have no obligation to gross up any payment made subject to any deduction or withholding pursuant to Applicable Law. In addition, amounts deducted or withheld by the Paying Agent as described in this paragraph will be treated as paid to the Holder of the Subordinated Debt Securities, and the Company will not pay Additional Amounts in respect of such deduction or withholding, except to the extent required under Section 10.04.



ARTICLE 7  
HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 7.01. *The Company to Furnish Trustee Names and Addresses of Holders.* The Company with respect to any series of Subordinated Debt Securities, will furnish or cause to be furnished to the Trustee;

(a) not more than 15 days after each Regular Record Date (or after each of the dates to be specified for such purpose for non-interest bearing Subordinated Debt Securities and Subordinated Debt Securities on which interest is paid less frequently than quarterly as contemplated by Section 3.01), a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Subordinated Debt Securities as of such Regular Record Date or such specified date, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished.

The Company need not furnish or cause to be furnished to the Trustee pursuant to this Section 7.01 the names and addresses of Holders of Subordinated Debt Securities so long as the Trustee acts as Subordinated Debt Security Registrar with respect to such series of Subordinated Debt Securities.

Section 7.02. *Preservation of Information; Communication to Holders.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders (i) contained in the most recent list furnished to the Trustee as provided in Section 7.01 and (ii) received by the Trustee in its capacity as Paying Agent or Subordinated Debt Security Registrar (if so acting). The Trustee may dispose of any list furnished to it as provided in Section 7.01 upon receipt of a new list so furnished.

(b) The rights of the Holders of Subordinated Debt Securities of any series to communicate with other Holders with respect to their rights under this Subordinated Debt Securities Indenture or under the Subordinated Debt Securities, and the corresponding rights and privileges of the Trustee, shall be as provided by the Trust Indenture Act.

(c) Every Holder, by receiving and holding a Subordinated Debt Security, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of any of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with Section 7.02(b) or otherwise made pursuant to the Trust Indenture Act.

Section 7.03. *Reports by Trustee.*

(a) On or before May 15 in each year following the date hereof, so long as any Subordinated Debt Securities are Outstanding hereunder, the Trustee shall transmit to Holders as provided in the Trust Indenture Act a brief report dated as of a date required by and in compliance with the Trust Indenture Act.



(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each securities exchange upon which the Trustee has been notified that the Subordinated Debt Securities are listed, with the Commission and with the Company. The Company will notify the Trustee when Subordinated Debt Securities are listed on any securities exchange.

Section 7.04. *Reports by the Company.* The Company shall:

(a) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of such Sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate);

(b) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Subordinated Debt Securities Indenture as may be required from time to time by such rules and regulations. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate); and

(c) transmit to Holders, in the manner and to the extent required by the Trust Indenture Act, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (a) and (b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.



(d) The Trustee may conclusively presume that the Company is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise is complying with such reporting requirements unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office of the Trustee a written notification from the Company stating otherwise. The Trustee shall have no duty to examine any information, reports or other documents filed by the Company pursuant to Section 13 or 15(d) of the Exchange Act, and need make no determination as to whether they comply with the requirements of this Section 7.04, its sole duty in respect thereof being to place them in its files and make them available for inspection by any Holder upon reasonable request during normal business hours.

**ARTICLE 8**  
CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER

Section 8.01. *Company May Consolidate, Etc., Only on Certain Terms.* The Company may, without the consent of Holders of any Subordinated Debt Securities of any series Outstanding under this Subordinated Debt Securities Indenture, consolidate or amalgamate with or merge into any other corporation or convey or transfer or lease its properties and assets substantially as an entirety to any Person, provided that:

(a) the corporation formed by or into which the Company is consolidated, amalgamated or merged or the Person which acquires by conveyance or transfer the properties and assets of the Company substantially as an entirety (i) shall be a company organized and existing under the laws of any part of the European Union, and (ii) shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, in the case of the Company, the due and punctual payment of the principal of (and premium, if any) and interest and Additional Amounts, if any, on all the Subordinated Debt Securities in accordance with the provisions of such Subordinated Debt Securities and this Subordinated Debt Securities Indenture and the performance of every covenant of this Subordinated Debt Securities Indenture on the part of the Company to be performed or observed;

(b) immediately after giving effect to such consolidation, amalgamation, merger, conveyance or transfer, no Event of Default and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and

(c) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger, conveyance or transfer and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 8.02. *Successor Corporation Substituted.* In the event of any merger, consolidation, sale, conveyance permitted by Section 8.01 and Section 5.01 above, Additional Amounts under the Subordinated Securities will thereafter be payable in respect of taxes imposed by the acquiring corporation's, or the resulting corporation's,



200FX&=8eN2DbN7LA

jurisdiction of incorporation or tax residence (subject to exceptions equivalent to those that apply to the obligation to pay Additional Amounts pursuant to Section 10.04, as the case may be, in respect of taxes imposed by the laws of the Kingdom of Spain) rather than taxes imposed by the Kingdom of Spain. Additional Amounts with respect to payments of interest or principal due prior to the date of such merger, consolidation, sale, conveyance or lease will be payable only in respect of taxes imposed by the Kingdom of Spain. The acquiring or resulting corporation will also be entitled to redeem the Subordinated Debt Securities in the circumstances described in Section 11.08 with respect to any change or amendment to, or change in the application or official interpretation of the laws or regulations of such jurisdiction, which change or amendment must occur subsequent to the date of any merger, consolidation, sale, conveyance or lease permitted by Section 8.01 and Section 5.01 if the successor entity is not incorporated or tax resident in the Kingdom of Spain. In the event of assumption of the Company's obligations in connection with a merger, consolidation, sale or conveyance of substantially all of its assets, the Company shall be released from all obligations and covenants under this Subordinated Debt Securities Indenture or the Subordinated Debt Securities and the successor corporation formed by such consolidation or amalgamation or into which the Company is merged or to which such conveyance or transfer is made shall succeed to and be substituted for, and may exercise every right and power of, the Company under this Subordinated Debt Securities Indenture with the same effect as if such successor corporation had been named as the Company.

Section 8.03. *Assumption of Obligations.* Subject to the prior consent of the European Central Bank, if required, any direct or indirect subsidiary of the Company may assume the obligations of the Company (a "successor entity") under the Subordinated Debt Securities of any series without the consent of the Holders of such series, *provided that:*

(a) the successor entity shall expressly assume such obligations by an amendment to this Subordinated Debt Securities Indenture, executed by the Company and such successor entity, if applicable, and delivered to the Trustee, in form satisfactory to the Trustee and the Company shall, by amendment to this Subordinated Debt Securities Indenture, unconditionally guarantee all of the obligations of such successor entity under the Subordinated Debt Securities of such series and this Subordinated Debt Securities Indenture as so modified by such amendment;

(b) immediately after giving effect to such assumption of obligations, no Event of Default and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and

(c) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such assumption complies with this Article and that all conditions precedent herein provided for relating to such assumption have been complied with.

Upon any such assumption, the successor entity shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this



Subordinated Debt Securities Indenture with respect to any such Subordinated Debt Securities with the same effect as if such successor entity had been named as the Company in this Subordinated Debt Securities Indenture, and the Company or any legal and valid successor corporation which shall theretofore have become such in the manner prescribed herein, shall be released from all liability as obligor upon any such Subordinated Debt Securities except as described in the following paragraph.

In the event of any assumption, Additional Amounts under the Subordinated Debt Securities will be payable in respect of taxes imposed by the assuming corporation's jurisdiction of incorporation or tax residence (subject to exceptions equivalent to those that apply to the obligation to pay Additional Amounts pursuant to Section 10.04 in respect of taxes imposed by the laws of the Kingdom of Spain) on payments of interest or principal made on or subsequent to the date of such assumption. Additional Amounts with respect to payments of interest or principal due prior to the date of such assumption will be payable only in respect of taxes imposed by the Kingdom of Spain. The direct or indirect subsidiary thereof that assumes the obligations of the Company in such cases will also be entitled to redeem the Securities in the circumstances described in Section 11.08 with respect to any change or amendment to, or change in the application or official interpretation of the laws or regulations of such jurisdiction, which change or amendment must occur subsequent to the date of any such assumption if the assuming entity is not incorporated or tax resident in the Kingdom of Spain. In the event of any such assumption, all obligations of the Company under the Securities shall immediately be discharged.

Section 8.04. *Substitution and Variation.* If a Capital Disqualification Event or an event that would entitle the Company to redeem the Subordinated Debt Securities of any series as set forth in Section 11.08 occurs and is continuing, the Company may substitute all (but not some) of the Subordinated Debt Securities of any series or modify the terms of all (but not some) of the Subordinated Debt Securities of such series, without any requirement for the consent or approval of the holders of the Subordinated Debt Securities of such series, so that they are substituted for, or varied to, become, or remain, Qualifying Notes, subject to having given not less than 30 nor more than 60 days' notice to the Holders of such series in accordance with Section 1.06 and to the Trustee (which notice shall be irrevocable and shall specify the date for substitution or, as applicable, variation), and subject to obtaining Regulator consent, if required.

Any such notice shall specify the relevant details of the manner in which such substitution or variation shall take effect and where the Holders of such series can inspect or obtain copies of the new terms and conditions of the Subordinated Debt Securities of such series. Such substitution or variation will be effected without any cost or charge to such Holders.

The Subordinated Debt Securities of any series shall cease to bear interest from (an including) the date of substitution thereof.

Any Holder or beneficial owner of the Subordinated Debt Securities of any series shall, by virtue of its acquisition of the Subordinated Debt Securities of any series or any



200FX&=8eN2Dh2Nsf

beneficial interest therein, be deemed to accept the substitution or variation of the terms of the Subordinated Debt Securities of such series as set forth in this Section 8.04 and to grant to the Company full power and authority to take any action and/or to execute and deliver any document in the name and/or on behalf of such Holder which is necessary or convenient to complete the substitution or variation of the terms of the Subordinated Debt Securities of such series, as applicable.

ARTICLE 9  
SUPPLEMENTAL INDENTURES

Section 9.01. *Supplemental Indentures without Consent of Holders.* Without the consent of any Holders, the Company, when authorized by a Board Resolution of the Company and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

- (a) to evidence the succession of another corporation to the Company and the assumption by any such successor of the covenants of the Company herein and in the Subordinated Debt Securities;
- (b) to add to the covenants of the Company for the benefit of the Holders of all or any series of Subordinated Debt Securities (and, if such covenants are to be for the benefit of fewer than all series of Subordinated Debt Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Company;
- (c) to add any additional Events of Default;
- (d) to change or eliminate any of the provisions of this Subordinated Debt Securities Indenture, or any supplemental indenture, provided that any such change or elimination shall become effective only when there is no Outstanding Subordinated Debt Security of any series created prior to the execution of such supplemental indenture that is entitled to the benefit of such provision or as to which such supplemental indenture would apply;
- (e) to secure the Subordinated Debt Securities;
- (f) to establish the form or terms of Subordinated Debt Securities of any series as permitted by Section 2.01 or 3.01;
- (g) to change any Place of Payment, so long as the Place of Payment as required by Section 3.01 is maintained in The City of New York;
- (h) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein or in any supplemental indenture;





(i) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Subordinated Debt Securities of one or more series and to add to or change any of the provisions of this Subordinated Debt Securities Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.12(b);

(j) to change or eliminate any provision of this Subordinated Debt Securities Indenture as permitted by Section 1.08;

(k) to name a Trustee for a particular series of Subordinated Debt Securities other than the Trustee named in the first paragraph of this Subordinated Debt Securities Indenture and to provide for the appropriate changes related to such appointment for a particular series of Subordinated Debt Securities; or

(l) with respect to any Subordinated Debt Security (including a Global Security) issued on or after the date hereof, to amend any such Subordinated Debt Security to conform to the description of the terms of such Subordinated Debt Security in the prospectus, prospectus supplement, product supplement, pricing supplement or any other similar offering document related to the offering of such Subordinated Debt Security.

Section 9.02. *Supplemental Indentures with Consent of Holders.* With the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Subordinated Debt Securities of each series affected by such supplemental Subordinated Debt Securities Indenture (voting as a class), by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Subordinated Debt Securities Indenture or of modifying in any manner the rights of the Holders of Subordinated Debt Securities of such series under this Subordinated Debt Securities Indenture; provided, however, that no such supplemental indenture may, without the consent of the Holder of each Outstanding Subordinated Debt Security affected thereby,

(a) change the Stated Maturity, if any, of any principal amount or any interest amounts in respect of any such Subordinated Debt Security, reduce the principal amount thereof or the rate of interest and Additional Amounts, if any, thereon, or any premium payable upon the redemption thereof, or reduce the amount of principal of an Original Issue Discount Security that would be due and payable upon an acceleration of the Maturity thereof pursuant to Section 5.02, or change the obligation of the Company (or its successor) to pay Additional Amounts pursuant to Section 10.04 (except as contemplated by Section 8.01(a) and permitted by Section 9.01(a)) on the Subordinated Debt Securities, or the currency of payment of the principal amount of, premium, if any, or interest on, any such Subordinated Debt Security, or change the Place of Payment, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof or the date any such payment is otherwise due and payable (or, in the case of redemption, on or after the Redemption Date); or



(b) reduce the percentage in aggregate principal amount of the Outstanding Subordinated Debt Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Subordinated Debt Securities Indenture or of certain defaults hereunder and their consequences) provided for in this Subordinated Debt Securities Indenture; or

(c) modify the subordination provisions of Article 12 or Section 13.02; or

(d) modify any of the provisions of this Section 9.02 or Section 5.13 except to increase any such percentage or to provide that certain other provisions of this Subordinated Debt Securities Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Subordinated Debt Security affected thereby; provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to the “Trustee” and concomitant changes in this Section, or the deletion of this proviso, in accordance with the requirements of Sections 6.12(b) and 9.01(j); or

(e) change in any manner adverse to the interests of the Holders of any Subordinated Debt Securities, the subordination provisions of the Subordinated Debt Securities or the terms and conditions of the obligations of the Company in respect of the due and punctual payment of any amounts due and payable on the Subordinated Debt Securities.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

A supplemental indenture which changes or eliminates any covenant or other provision of this Subordinated Debt Securities Indenture which has expressly been included solely for the benefit of one or more particular series of Subordinated Debt Securities, or which modifies the rights of the Holders of Subordinated Debt Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Subordinated Debt Securities Indenture of the Holders of Subordinated Debt Securities of any other series.

Section 9.03. *Execution of Supplemental Indentures.* In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Subordinated Debt Securities Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.01) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Subordinated Debt Securities Indenture and that such supplemental indenture constitutes a valid and binding obligation of the Company subject to customary exceptions. The Trustee may, but shall not be obliged to, enter into any such supplemental indenture which affects the Trustee’s own rights, duties or immunities under this Subordinated Debt Securities Indenture or otherwise.



Section 9.04. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture under this Article, this Subordinated Debt Securities Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Subordinated Debt Securities Indenture for all purposes; and every Holder of Subordinated Debt Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby, except as otherwise expressed therein.

Section 9.05. *Conformity with Trust Indenture Act.* Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

Section 9.06. *Reference in Subordinated Debt Securities to Supplemental Indentures.* Subordinated Debt Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Subordinated Debt Securities of any series so modified as to conform, in the opinion of the Trustee, the Company, to any such supplemental indenture may be prepared and executed by the Company and such Subordinated Debt Securities may be authenticated and delivered by the Trustee in exchange for Outstanding Subordinated Debt Securities of such series.

ARTICLE 10  
COVENANTS

Section 10.01. *Payment of Principal, Premium, and Interest.* The Company covenants and agrees for the benefit of each series of Subordinated Debt Securities that it will (subject to Section 3.07 and to the subordination provisions in Article 12 and to Section 13.02) duly and punctually pay to the Holders the principal of (and premium, if any) and interest, if any, and Additional Amounts on the Subordinated Debt Securities of that series in accordance with the terms of the Subordinated Debt Securities and this Subordinated Debt Securities Indenture. Except as otherwise specified, as contemplated by Section 3.01 hereof, the Trustee shall act as Paying Agent with respect to any series of Subordinated Debt Securities.

Section 10.02. *Maintenance of Office or Agency.* The Company will maintain in each Place of Payment for any series of Subordinated Debt Securities an office or agency where Subordinated Debt Securities of that series may be presented or surrendered for payment, where Subordinated Debt Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Subordinated Debt Securities of that series and this Subordinated Debt Securities Indenture may be served; provided, however, that at the option of the Company in the case of definitive Subordinated Debt Securities of such series, payment of any interest thereon may be made by check mailed to the address of the Person entitled herein as such address shall appear in the Subordinated Debt Security Register. With respect to the Subordinated Debt Securities of any series, such office or agency in each Place of Payment shall be specified as contemplated by Section 3.01, and



if not so specified, initially shall be 225 Liberty Street, New York, New York, 10286. Unless otherwise specified pursuant to Section 3.01, the Company will maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands to or upon the Company in respect of Subordinated Debt Securities of any series and this Subordinated Debt Securities Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee. The Company hereby appoints the Trustee as its agent to receive all presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies (in or outside the Borough of Manhattan, The City of New York) where the Subordinated Debt Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of any obligation to maintain an office or agency in each Place of Payment (except as otherwise indicated in this Section) for Subordinated Debt Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 10.03. *Money for Payments to be Held in Trust.* If the Company shall at any time act as Paying Agent with respect to the Subordinated Debt Securities of any series, it will, on or before each due date for payment of the principal of (and premium, if any) or interest, if any, on any of the Subordinated Debt Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest, if any, so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Subordinated Debt Securities, it will, prior to each due date for payment of the principal of (and premium, if any) or interest, if any, on any Subordinated Debt Securities of that series deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest, if any, so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or its failure so to act. Unless otherwise specified as contemplated by Section 3.01, the Trustee shall be the Company's Paying Agent. The Company will cause each Paying Agent for any series of Subordinated Debt Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(a) hold all sums held by it for the payment of the principal of (and premium, if any) or interest, if any, on Subordinated Debt Securities of that series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;



200FX&=8eN2DwLysF

(b) give the Trustee notice of any default by the Company (or any other obligor upon the Subordinated Debt Securities of that series) in the making of any payment, when due and payable, or principal of (and premium, if any) or interest, if any, on Subordinated Debt Securities of that series; and

(c) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at the time, for the purpose of obtaining the satisfaction and discharge of this Subordinated Debt Securities Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (and premium, if any) or interest, if any, on any Subordinated Debt Security of any series and remaining unclaimed for two years after such principal (and premium, if any) or interest, if any, have become due and payable shall be paid to the Company, on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Subordinated Debt Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published at least once, in an Authorized Newspaper, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be paid to the Company.

Section 10.04. *Additional Amounts.* Unless otherwise specified pursuant to Section 3.01, all amounts payable (whether in respect of principal, redemption amount, interest or otherwise) in respect of any series of Subordinated Debt Securities 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 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, unless the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law. In that event, the Company shall pay such additional amounts (“**Additional Amounts**”) as will result in receipt by the Holders of the Subordinated Debt Securities of the particular series of such amounts as would have been received by them had no such withholding or deduction been required.



The Company shall not be required to pay any Additional Amounts in respect of any series of Subordinated Debt Securities:

(i) to, or to a third party on behalf of, a Holder if the Holder or the beneficial owner of Subordinated Debt Securities is liable for such taxes, duties, assessments or governmental charges in respect of such Subordinated Debt Securities by reason of his having some connection with Spain other than the mere holding of a Subordinated Debt Security; or

(ii) to, or to a third party on behalf of, a Holder in respect of whose series of Subordinated Debt Securities the Company does not receive such information as may be required in order to comply with the applicable Spanish tax reporting obligations, including but not limited to the receipt in a timely manner of a duly executed and completed certificate in accordance with Law 10/2014 and Royal Decree 1065/2007, as amended, and any implementing legislation or regulation; or

(iii) to, or to a third party on behalf of, a Holder of Subordinated Debt Securities of any series if the Holder or beneficial owner fails to make any necessary claim or to comply with any certification, identification or other requirements concerning the nationality, residence, identity or connection with the taxing jurisdiction of such Holder or beneficial owner, if such claim or compliance is required by statute, treaty, regulation or administrative practice of Spain as a condition to relief or exemption from such taxes; or

(iv) presented for payment (where presentation is required) more than 30 days after the Relevant Date, except to the extent that the relevant Holder would have been entitled to such Additional Amounts on presenting the same for payment on the expiry of such period of 30 days; or

(v) in relation to any estate, inheritance, gift, sales, transfer or similar taxes; or

(vi) to, or to a third party on behalf of, individuals resident for tax purposes in the Kingdom of Spain; or

(vii) to, or to a third party on behalf of, a Spanish-resident legal entity subject to Spanish corporation tax if the Spanish tax authorities determine that the Subordinated Debt Securities of such series do not comply with exemption requirements specified in the Reply to a Consultation of the Directorate General for Taxation (*Dirección General de Tributos*) dated 27 July 2004 and require a withholding to be made; or



(viii) where the withholding or deduction is required pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to Sections 1471 through 1474 of the Code (“FATCA”), any regulations or agreements thereunder, any official interpretations thereof, any intergovernmental agreements with respect thereto (including the intergovernmental agreement between the United States and Spain on the implementation of FATCA), or any law implementing an intergovernmental agreement or any regulations or official interpretations relating thereto; or

(ix) in the case of any combination of items listed in (i) through (viii) above.

Additional Amounts will also not be paid with respect to any payment to a Holder who is a fiduciary, a partnership, a limited liability company or person other than the sole beneficial owner of that payment, to the extent that payment would be required by the laws of Spain (or any political subdivision thereof) to be included in the income, for tax purposes, of a beneficiary or settlor with respect to the fiduciary, a member of that partnership, an interest holder in that limited liability company or a beneficial owner who would not have been entitled to the Additional Amounts had it been the Holder.

For the purposes of (iv) above, the “Relevant Date” means, in respect of any payment, the date on which such payment first becomes due and payable, but if the full amount of the moneys payable has not been received by the Trustee on or prior to such due date, it means the first date on which, the full amount of such moneys having been so received and being available for payment to Holders of Subordinated Debt Securities, notice to that effect shall have been duly given to the Holders of the relevant series of Subordinated Debt Securities in accordance with Section 1.06.

Unless the context otherwise requires, any reference in this Section 10.04 to “principal” shall include any premium payable, or Redemption Amount and any other amounts in the nature of principal payable pursuant to this Subordinated Debt Securities Indenture and “interest” shall include all amounts payable pursuant to Section 3.07 and any other amounts in the nature of interest payable under this Subordinated Debt Securities Indenture.

As used in this Section 10.04, the term “Redemption Amount” means, as appropriate, the Maturity Redemption Amount, Early Redemption Amount (Tax), Early Redemption Amount (Capital Disqualification Event), Early Redemption Amount (Call) and Early Termination Amount or such other amount in the nature of a redemption amount as may be specified in, or determined in accordance with the Section 3.01.

Unless the context requires otherwise, any references in this Subordinated Debt Securities Indenture to payment of principal of or interest on a Subordinated Debt Security shall be deemed to include any Additional Amounts payable with respect thereto.



In the event that any withholding or deduction for or on account of any taxes is required, at least 10 days prior to each date of payment of principal of or interest on the relevant series of Subordinated Debt Securities, or, if later, promptly after the obligation to withhold or deduct becomes known to the Company, the Company will furnish to the Trustee and the Paying Agent, if other than the Trustee, an Officer's Certificate specifying the amount required to be withheld or deducted on such payments to such Holders, certifying that the Company shall pay such amounts required to be withheld to the appropriate taxing jurisdiction and certifying to the fact that the Additional Amounts will be payable and the amounts so payable to each Holder, and that the Company will pay to the Trustee or the Paying Agent the Additional Amounts required to be paid; provided that no such Officer's Certificate will be required prior to any date of payment of principal of or interest on such Subordinated Debt Securities if there has been no change with respect to the matters set forth in a prior Officer's Certificate. The Trustee and Paying Agent may rely on the fact that any Officer's Certificate contemplated by this paragraph has not been furnished as evidence of the fact that no withholding or deduction for or on account of any taxes is required. The Company covenants to indemnify the Trustee and Paying Agent for and to hold them harmless against any loss, liability or expense reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any such Officer's Certificate furnished pursuant to this paragraph or on the fact that any Officer's Certificate contemplated by this paragraph has not been furnished.

Section 10.05. *Corporate Existence.* Subject to Article 8, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its respective corporate existence, *provided*, however, that the foregoing shall not obligate the Company to preserve any such right or franchise if the Company shall determine that the preservation thereof is no longer desirable in the conduct of its business and that the loss thereof is not disadvantageous in any material respect to any Holder.

Section 10.06. *Statement as to Compliance.* The Company will deliver to the Trustee, within 120 days after the end of each fiscal year, a certificate in compliance with Section 314(a)(4) of the Trust Indenture Act.

Section 10.07. *Original Issue Document.* The Company shall provide to the Trustee on a timely basis such information, if any, as the Trustee requires to enable the Trustee to prepare and file any form required to be submitted by the Company with the Internal Revenue Service and the Holders of the Subordinated Debt Securities relating to any original issue discount, including, without limitation, Form 8821, Form 1099-OID or any successor forms.

ARTICLE 11  
REDEMPTION OF SUBORDINATED DEBT SECURITIES

Section 11.01. *Applicability of Article.* Subordinated Debt Securities of any series shall be redeemable in accordance with their terms and (except as otherwise specified pursuant to Section 3.01 for Subordinated Debt Securities of any series) in accordance with this Article 11. Subordinated Debt Securities of any series may not be redeemed except in accordance with provisions of applicable law. The Subordinated Debt Securities of any series may not be redeemed in whole or in part at the option of the Holder thereof.





Section 11.02. *Election to Redeem; Notice to Trustee.* The election of the Company to redeem any Subordinated Debt Securities shall be evidenced by a Board Resolution. Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Subordinated Debt Securities, the Company shall, at least 30 days prior, but not more than 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date, of the principal amount of Subordinated Debt Securities of such series to be redeemed and, if applicable, the tenor of the Subordinated Debt Securities to be redeemed. In the case of any redemption of Subordinated Debt Securities of any series prior to the expiration of any provision restricting such redemption provided in the terms of such Subordinated Debt Securities or elsewhere in this Subordinated Debt Securities Indenture, the Company shall furnish the Trustee with respect to such Subordinated Debt Securities with an Officer's Certificate evidencing compliance with or waiver of such provision.

Section 11.03. *Selection by Trustee of Subordinated Debt Securities to Be Redeemed.* Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Subordinated Debt Securities, if fewer than all the Subordinated Debt Securities of any series are to be redeemed, the particular Subordinated Debt Securities to be redeemed shall be selected not less than 30 days nor more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Subordinated Debt Securities of such series not previously called for redemption, pro rata, by lot or by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Subordinated Debt Securities of that series or any multiple thereof) of the principal amount of Subordinated Debt Securities of such series of a denomination larger than the minimum authorized denomination for Subordinated Debt Securities of that series.

The Trustee shall promptly notify the Company in writing of the Subordinated Debt Securities selected for redemption and, in the case of any Subordinated Debt Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Subordinated Debt Securities Indenture, unless the context otherwise requires, all provisions relating to the redemption of Subordinated Debt Securities shall relate in the case of any Subordinated Debt Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Subordinated Debt Security which has been or is to be redeemed.

Section 11.04. *Notice of Redemption.* Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Subordinated Debt Securities, notice of redemption shall be given not less than 30 days nor more than 60 days prior to the Redemption Date to each Holder of Subordinated Debt Securities to be redeemed in the manner and to the extent provided in Section 1.06.



All notices of redemption shall state:

- (a) the series of Subordinated Debt Securities subject to redemption,
- (b) the Redemption Date,
- (c) the Redemption Price,

(d) if fewer than all the Outstanding Subordinated Debt Securities of any series are to be redeemed, the principal amount of the Subordinated Debt Securities to be redeemed, (except in the case of a redemption pursuant to Section 11.08 or 11.09, which must be a redemption in full),

(e) that on the Redemption Date the Redemption Price together with any accrued but unpaid interest will become due and payable upon each such Subordinated Debt Security to be redeemed and, if applicable, that interest thereon will cease to accrue on or after the said date,

(f) the place or places where such Subordinated Debt Securities are to be surrendered for payment of the Redemption Price, and

(g) the CUSIP, Common Code and/or ISIN number or numbers, if any, with respect to such Subordinated Debt Securities.

Any notice provided pursuant to this Section 11.04 shall be irrevocable, and the delivery thereof shall oblige the Company to make the redemption therein specified (unless the Bail-in Power is exercised by the Relevant Resolution Authority before the occurrence of such redemption).

Notice of redemption of Subordinated Debt Securities to be redeemed at the selection of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company, and the Company shall deliver an Officer's Certificate requesting that the Trustee give such and setting forth the information to be stated in such notice no less than 10 Business Days prior to the date of the notice to Holders of Subordinated Debt Securities (unless a shorter notice shall be satisfactory to the Trustee).

Section 11.05. *Deposit of Redemption Price.* On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as Paying Agent, segregate and hold in trust as provided in Section 10.03) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued but unpaid interest on, all the Subordinated Debt Securities which are to be redeemed on that date.

Section 11.06. *Subordinated Debt Securities Payable on Redemption Date.* Notice of redemption having been given as aforesaid, the Subordinated Debt Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the



Company shall default in the payment of the Redemption Price and accrued interest, if any) such Subordinated Debt Securities shall cease to accrue interest. Upon surrender of any such Subordinated Debt Security for redemption in accordance with said notice, such Subordinated Debt Security shall be paid by the Company at the Redemption Price, together with accrued but unpaid interest to the Redemption Date; provided, however, that with respect to any Subordinated Debt Securities, unless otherwise specified as contemplated by Section 3.01, a payment of interest which is payable on an Interest Payment Date which is the Redemption Date, shall be payable to the Holders of such Subordinated Debt Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Regular or Special Record Date according to the terms of the Subordinated Debt Securities and the provisions of Section 3.07. Subordinated Debt Securities in definitive form shall be presented for redemption to the Paying Agent.

If any Subordinated Debt Security called for redemption shall not be so paid upon surrender thereof for redemption, the Subordinated Debt Security shall, until paid, continue to accrue interest from and after the Redemption Date in accordance with its terms and the provisions of Section 3.07.

Section 11.07. *Subordinated Debt Securities Redeemed in Part.* Any Subordinated Debt Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Subordinated Debt Security without service charge, a new Subordinated Debt Security or Subordinated Debt Securities of the same series of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Subordinated Debt Security so surrendered. If a Global Security is surrendered, the new Subordinated Debt Security will also be a Global Security.

Section 11.08. *Optional Redemption Due to Changes in Tax Treatment.* Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Subordinated Debt Securities, if, in relation to the Subordinated Debt Securities of any series, (i) as a result of any change in the laws or regulations of Spain or of any political subdivision thereof or any authority or agency therein or thereof having power to tax or in the interpretation or administration of any such laws or regulations which becomes effective on or after the date of issue of the first issued Subordinated Debt Securities of such series or any earlier date specified pursuant to Section 3.01, the Company shall determine that (a) the Company would be required to pay Additional Amounts pursuant to Section 10.04 or (b) the Company would not be entitled to claim a deduction in computing tax liabilities in Spain in respect of any interest to be paid on the next interest payment date on such series of Subordinated Debt Securities or the value of such deduction to the Company would be materially reduced or (c) the applicable tax treatment of the Subordinated Debt Securities of such series changes in a material way that was not reasonably foreseeable at the issue date and (ii) such circumstances are



200FX&=8eN2c3e7s3

evidenced by the delivery by the Company to the Trustee of a certificate signed by two directors of the Company stating that such circumstances prevail and describing the facts leading thereto, an opinion of independent legal advisers of recognized standing to the effect that such circumstances prevail and a copy of the Regulator’s consent for the redemption, the Company may, at its option and having given no less than 30 nor more than 60 days’ notice (ending, in the case of Subordinated Debt Securities which bear interest at a floating rate, on a day upon which interest is payable) to the Holders of the Subordinated Debt Securities of such series in accordance with Section 11.04 (which notice shall be irrevocable), redeem in whole, but not in part, the Outstanding Subordinated Debt Securities of such series (in accordance with the requirements of Applicable Banking Regulations in force at the relevant time) at their early tax redemption amount (the “Early Redemption Amount (Tax)”) (which shall be their principal amount or at such other Early Redemption Amount (Tax) as may be specified in or determined pursuant to Section 3.01), together with accrued interest (if any) thereon; provided, however, that (i) in the case of (a) above, no such notice of redemption may be given earlier than 90 days (or, in the case of Subordinated Debt Securities which bear interest at a floating rate a number of days which is equal to the aggregate of the number of days falling within the then current interest period applicable to the Subordinated Debt Securities of such series plus 60 days) prior to the earliest date on which the Company would be obliged to pay such Additional Amounts were a payment in respect of the Subordinated Debt Securities of such series then due and (ii) redemption for taxation reasons pursuant to this Section 11.08 may only take place in accordance with Applicable Banking Regulations in force at the relevant time and subject to the Company obtaining the prior consent of the Regulator.

Section 11.09. *Optional Redemption For Capital Disqualification Event.* Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Subordinated Debt Securities, if, in relation to the Subordinated Debt Securities of any series, (i) there is a Capital Disqualification Event and (ii) such circumstances are evidenced by the delivery by the Company to the Trustee of a certificate signed by two directors stating that the said circumstances prevail and describing the facts leading thereto and a copy of the Regulator’s consent to the redemption, the Company may, at its option and having given no less than 30 nor more than 60 days’ notice (ending, in the case of Subordinated Debt Securities which bear interest at a floating rate, on a day upon which interest is payable) to the holders of the Subordinated Debt Securities of such series in accordance with Section 11.04 (which notice shall be irrevocable), redeem in whole but not in part the Outstanding Subordinated Debt Securities of such series in accordance with the requirements of Applicable Banking Regulations in force at the relevant time) at their early capital disqualification event redemption amount (the “Early Redemption Amount (Capital Disqualification Event)”) (which shall be their principal amount or at such other Early Redemption Amount (Capital Disqualification Event) except as may be specified in or determined pursuant to Section 3.01), together with any accrued and unpaid interest thereon to (but excluding) the date fixed for redemption; provided, however, that the Regulator consents to redemption of the Subordinated Debt Securities of such series.



200FX&=eNzvd@s:

Redemption for regulatory reasons is subject to the prior consent of the Regulator and may only take place in accordance with Applicable Banking Regulations in force at the relevant time.

Section 11.10. *Optional Early Redemption (Call)*. Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Subordinated Debt Securities, the Company may, at the date or dates specified as contemplated by Section 3.01 with respect to such series, upon the expiration of the appropriate notice pursuant to Section 11.04, and subject, to the prior consent of the Regulator, redeem in whole (but not, except as otherwise specified pursuant to Section 3.01, in part) the Subordinated Debt Securities of such series at their call early redemption amount (the “Early Redemption Amount (Call)”) (which shall be their principal amount or such other Early Redemption Amount (Call) as may be specified in or determined pursuant to Section 3.01), together with any accrued interest thereon to (but excluding) the date fixed for redemption.

Redemption at the option of the Company pursuant to this Section 11.10 is subject to the prior consent of the Regulator and may only take place in accordance with Applicable Banking Regulations in force at the relevant time.

If the Subordinated Debt Securities of any series are to be redeemed in part only on any date in accordance with this Section 11.10, the Subordinated Debt Securities of such series shall be redeemed (so far as may be practicable) pro rata to their principal amounts, or by lot or such other method as the Trustee deems fair and appropriate, subject always as aforesaid and provided always that the amount redeemed in respect of the Subordinated Debt Securities of such series shall be equal to the minimum authorized denomination thereof or an integral multiple thereof, subject always to compliance with all applicable laws and the requirements of any clearing system on which the Subordinated Debt Securities of any such series may be cleared and of any listing authority, stock exchange and/or quotation system on which the Subordinated Debt Securities of such series may be listed and/or quoted.

Section 11.11. *Repurchase of Subordinated Debt Securities*. Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Subordinated Debt Securities, the Company and any of its subsidiaries or any third party designated by any of them, may at any time repurchase Subordinated Debt Securities of any series in the open market or otherwise at any price; *provided that* the repurchase of the Subordinated Debt Securities of such series by the Company or any of its subsidiaries shall take place in accordance with Applicable Banking Regulations in force at the relevant time.

ARTICLE 12

SUBORDINATION OF SUBORDINATED DEBT SECURITIES

Section 12.01. *Subordinated Debt Securities Subordinate to Claims of Senior Creditors*. The Company, for itself, its successors and assigns, covenants and agrees, and each Holder of the Subordinated Debt Securities of any series by his acceptance thereof, likewise covenants and agrees, that the payment obligations of the Company under the Subordinated Debt Securities of such series on account of principal constitute direct,



unconditional, unsecured and subordinated obligations (*créditos subordinados*) of the Company according to Article 92.2° of the Spanish Insolvency Law and, in accordance with Additional Provision 14.2° of Law 11/2015, 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 Company (unless they qualify as subordinated claims (*créditos subordinados*) pursuant to Articles 92.3° to 92.7° of the Spanish Insolvency Law) rank for so long as the obligations of the Company in respect of the Subordinated Debt Securities constitute Tier 2 Instruments:

- (i) *pari passu* among themselves and with (i) all other claims for principal in respect of Tier 2 Instruments which are not subordinated obligations under Articles 92.3° to 92.7° of the Spanish Insolvency Law, and (ii) any other subordinated obligations (*créditos subordinados*) which by law and/or by their terms, to the extent permitted by Spanish law, rank *pari passu* with the Company's obligations under the relevant series of Subordinated Debt Securities;
- (ii) junior to (i) any unsubordinated obligations (*créditos ordinarios*) of the Company, (ii) any subordinated obligations (*créditos subordinados*) of the Company under Article 92.1° of the Spanish Insolvency Law, (iii) any claim for principal in respect of Senior Subordinated Liabilities which are not subordinated obligations under Articles 92.3° to 92.7° of the Spanish Insolvency Law and (iv) any other subordinated obligations (*créditos subordinados*) which by law and/or by their terms, to the extent permitted by Spanish law, rank senior to the Company's obligations under the relevant series of Subordinated Debt Securities; and
- (iii) senior to (i) any claims for principal in respect of Additional Tier 1 Instruments of the Company, (ii) any subordinated obligations (*créditos subordinados*) under Articles 92.3° to 92.7° of the Spanish Insolvency Law and (iii) any other subordinated obligations (*créditos subordinados*) of the Company which by law and/or by their terms, to the extent permitted by Spanish law, rank junior to the obligations of the Company under the relevant series of Subordinated Debt Securities.

Claims of Holders of Subordinated Debt Securities of any series in respect of interest accrued but unpaid as of the commencement of any insolvency procedure in respect of the Company shall constitute subordinated claims (*créditos subordinados*) against the Company ranking in accordance with the provisions of Article 92.3° of the Spanish Insolvency Law and no further interest shall accrue from the date of the declaration of insolvency of the Company.

The provisions of this Article 12 shall apply only to rights or claims payable under any Subordinated Debt Securities of any series and nothing herein shall affect or prejudice the payment of the costs, charges, expenses, liabilities, indemnity or remuneration of the Trustee, the first lien rights of the Trustee under Section 6.08 hereof, or the rights and remedies of the Trustee in respect thereof.

The Company agrees with respect to any series of Subordinated Debt Securities and each Holder of Subordinated Debt Securities of any series, by his or her acquisition



of a Subordinated Debt Security will be deemed to have agreed to the subordination as described in this Section 12.01. Each such Holder will be deemed to have irrevocably waived his or her rights of priority which would otherwise be accorded to him or her under the laws of Spain, to the extent necessary to effectuate the subordination provisions of the Subordinated Debt Security. In addition, each holder of Subordinated Debt Securities of any series by his or her acquisition of such Subordinated Debt Securities authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to effectuate the subordination of the such Subordinated Debt Securities as provided in this Subordinated Debt Securities Indenture and appoints the Trustee his or her attorney-in-fact for any and all such purposes.

Section 12.02. *Status of the Subordinated Debt Securities.* The Subordinated Debt Securities of any series constitute direct, unconditional, subordinated and unsecured obligations of the Company.

Section 12.03. *Provisions Solely to Define Relative Rights.* The provisions of this Article 12 are and are intended solely for the purpose of defining the relative rights of the Holders of the Subordinated Debt Securities of each series on the one hand and the Senior Creditors on the other hand. Nothing contained in this Article or elsewhere in this Subordinated Debt Securities Indenture or in such Subordinated Debt Securities is intended to or shall (a) impair, as among the Company and the Holders of the Subordinated Debt Securities, the obligation of the Company, which is absolute and unconditional, to pay to the holders of such claims the principal of, premium, if any, and interest, if any, on such Subordinated Debt Securities as and when the same shall become due and payable in accordance with their terms and the terms of this Subordinated Debt Securities Indenture; or (b) affect the relative rights against the Company of the Holders of such Subordinated Debt Securities; or (c) prevent the Trustee or the Holder of any Subordinated Debt Securities of the series from exercising all remedies otherwise permitted by applicable law upon default under this Subordinated Debt Securities Indenture, subject to the rights, if any, under this Article of the Senior Creditors to receive cash, property or securities otherwise payable or deliverable to the Trustee or such holder.

Section 12.04. *Waiver of Right of Set-off.* Subject to applicable law, neither any Holder or beneficial owner of the Subordinated Debt Securities of any series nor the Trustee acting on behalf of the Holders of the Subordinated Debt Securities of such series may exercise, claim or plead any right of set-off, compensation or retention in respect of any amount owed to it by the Company in respect of, or arising under, or in connection with, the Subordinated Debt Securities of such series or this Subordinated Debt Securities Indenture and each Holder and beneficial owner of the Subordinated Debt Securities of such series, by virtue of its holding of any Subordinated Debt Securities of such series or any interest therein, and the Trustee acting on behalf of the Holders of the Subordinated Debt Securities of such series, shall be deemed to have waived all such rights of set-off, compensation or retention. If, notwithstanding the above, any amounts due and payable to any Holder or beneficial owner of a Subordinated Debt Security of any series or any interest therein by the Company in respect of, or arising under, the Subordinated Debt Securities of such series are discharged by set-off, such Holder or beneficial owner shall,



subject to applicable law, immediately pay an amount equal to the amount of such discharge to the Company (or, if the event of any voluntary or involuntary liquidation of the Company shall have occurred, the liquidator or administrator of the Company, as the case may be) and, until such time as payment is made, shall hold an amount equal to such amount in trust (where possible) or otherwise for the Company (or the liquidator or administrator of the Company, as the case may be) and, accordingly, any such discharge shall be deemed not to have taken place.

Section 12.05. *Trustee to Effectuate Subordination.* Each Holder of a Subordinated Debt Security by his acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination of the Subordinated Debt Securities provided in this Article 12 and appoints the Trustee his attorney-in-fact for any and all such purposes.

Section 12.06. *Trustee Not Fiduciary for Senior Creditors.* With respect to the Senior Creditors, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Subordinated Debt Indenture, and no implied covenants or obligations with respect to the Senior Creditors shall be read into this Subordinated Debt Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the Senior Creditors and shall not be liable to any such holders if it shall mistakenly pay over or distribute to Holders of Subordinated Debt Securities of the series or to the Company or to any other Person cash, property or securities to which any Senior Creditors shall be entitled by virtue of this Article or otherwise.

Section 12.07. *Rights of Trustee as Senior Creditor; Preservation of Trustee's Rights.* The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any claims of Senior Creditors which may at any time be held by it, to the same extent as any other Senior Creditor, and nothing in this Subordinated Debt Securities Indenture or the Trust Indenture Act shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 5.06 and Section 6.08.

Section 12.08. *Article Applicable to Paying Agents.* At all times when a Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term “**Trustee**” as used in this Article shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; provided, however, that Section 12.07 shall not apply to the Company or any Affiliate of the Company if the Company or such Affiliate acts as Paying Agent.





**ARTICLE 13**  
**BAIL-IN AND RESOLUTION ACTIONS**

Section 13.01. *Agreement and Acknowledgement with Respect to the Exercise of the Bail-in Power.* (a) Notwithstanding any other term of the Subordinated Debt Securities of any series or any other agreements, arrangements, or understandings between the Company and any Holder of the Subordinated Debt Securities of any series, by its acquisition of the Subordinated Debt Securities of any series, each Holder (which, for the purposes of this clause, includes each holder of a beneficial interest in the Subordinated Debt Securities of any series) acknowledges, accepts, consents to and agrees to be bound by the exercise of any Bail-in Power (as defined herein) by the Relevant Resolution Authority that may result in the write-down or cancellation of all or a portion of the Amounts Due on the Subordinated Debt Securities and/or the conversion of all or a portion of the Amounts Due on the Subordinated Debt Securities into shares or other securities or other obligations of the Company or another person, including by means of a variation to the terms of the Subordinated Debt Securities to give effect to the exercise by the Relevant Resolution Authority of such Bail-in Power. Each Holder of the Subordinated Debt Securities further acknowledges and agrees that the rights of the holders of the Subordinated Debt Securities are subject to—and will be varied, if necessary, so as to give effect to—the exercise of any Bail-in Power by the Relevant Resolution Authority.

(b) Upon the Company being informed or notified by the Relevant Resolution Authority of the actual exercise of the date from which the Bail-in Power is effective with respect to the Subordinated Debt Securities, the Company will provide a written notice to the holders of the debt securities of such series through DTC without delay regarding such exercise of Bail-in Power. The Company will also deliver a copy of such notice to the Trustee for information purposes. Any delay or failure by the Company to give notice shall not affect the validity and enforceability of the Bail-in Power nor the effects on the Subordinated Debt Securities described in this clause.

(c) No repayment or payment of Amounts Due, if any, on the Subordinated Debt Securities of any series, will become due and payable or be paid after the exercise of any Bail-in Power by the Relevant Resolution Authority if and to the extent such amounts have been reduced, converted, cancelled, amended or altered as a result of such exercise.

(d) By its acquisition of the Subordinated Debt Securities of any series, each Holder of the Subordinated Debt Securities of such series, (which, for the purposes of this clause, includes each holder of a beneficial interest in the Subordinated Debt Securities of such series), to the extent permitted by the Trust Indenture Act, will waive any and all claims, in law and/or in equity, against the Trustee for, agree not to initiate a suit against the Trustee in respect of, and agree that the Trustee will not be liable for, any action that the Trustee takes, or abstains from taking, in either case in accordance with the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Subordinated Debt Securities of such series.



(e) Additionally, by its acquisition of the Subordinated Debt Securities of any series, each Holder of the Subordinated Debt Securities of such series acknowledges and agrees that, upon the exercise of the Bail-in Power by the Relevant Resolution Authority:

(i) the Trustee will not be required to take any further directions from the Holders of the Subordinated Debt Securities of such series with respect to any portion of the Subordinated Debt Securities of such series that are written-down, converted to equity and/or cancelled under this Subordinated Debt Securities Indenture, which authorizes holders of a majority in aggregate outstanding principal amount of the outstanding Subordinated Debt Securities of such series to direct certain actions relating to the Subordinated Debt Securities of such series; and

(ii) this Subordinated Debt Securities Indenture will not impose any duties upon the Trustee whatsoever with respect to the exercise of the Bail-in Power by the Relevant Resolution Authority;

provided, however, that notwithstanding the exercise of the Bail-in Power by the Relevant Resolution Authority, so long as the Subordinated Debt Securities of any series remain outstanding, there will at all times be a Trustee for the Subordinated Debt Securities of such series in accordance with this Subordinated Debt Securities Indenture, and the resignation and/or removal of the Trustee and the appointment of a successor Trustee will continue to be governed by the Subordinated Debt Securities Indenture, including to the extent no additional supplemental indenture or amendment is agreed upon in the event the Subordinated Debt Securities of such series remain outstanding following the completion of the exercise of the Bail-in Power.

(f) By its acquisition of the Subordinated Debt Securities of any series, each Holder of the Subordinated Debt Securities of such series acknowledges and agrees that neither a cancellation or deemed cancellation of the principal or interest (in each case, in whole or in part), nor the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Subordinated Debt Securities of such series will give rise to a default for purposes of Section 315(b) (Notice of Default) and Section 315(c) (Duties of the Trustee in Case of Default) of the Trust Indenture Act.

(g) By purchasing the Subordinated Debt Securities of any series, each Holder (including each beneficial owner) of the Subordinated Debt Securities of such series shall be deemed to have authorized, directed and requested DTC and any direct participant in DTC or other intermediary through which it holds the Subordinated Debt Securities of such series to take any and all necessary action, if required, to implement the exercise of the Bail-in Power with respect to the Subordinated Debt Securities of such series as it may be imposed, without any further action or direction on the part of such Holder.

(h) Each Holder of the Subordinated Debt Securities of any series also acknowledges and agrees that the foregoing description of the Bail-in Power and its exercise is exhaustive on the matters described herein to the exclusion of any other agreements, arrangements or understandings relating to the application of any Bail-in Power to the Subordinated Debt Securities of any series.



(i) Each Holder of the Subordinated Debt Securities of any series that acquires such Subordinated Debt Securities in the secondary market (including each beneficial owner) shall be deemed to acknowledge, agree to be bound by and consent to the same provisions specified herein to the same extent as the Holders of the Subordinated Debt Securities that acquire the Subordinated Debt Securities upon their initial issuance, including, without limitation, with respect to the acknowledgment and agreement to be bound by and consent to the terms of the Subordinated Debt Securities, including in relation to the Bail-in-Power.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Subordinated Debt Securities Indenture and of signature pages by facsimile or electronic format (i.e., “pdf” or “tif”) transmission shall constitute effective execution and delivery of this Subordinated Debt Securities Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes.

*[Signature Page Follows]*



200FX&=&eN31H25Lv

IN WITNESS WHEREOF, the parties hereto have caused this Subordinated Debt Securities Indenture to be duly executed, all as of the day and year first above written.

BANCO SANTANDER, S.A.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

THE BANK OF NEW YORK MELLON LONDON  
BRANCH

By: \_\_\_\_\_  
Name:  
Title:

**APPENDIX 1: PROCEDURES FOR COMPLIANCE WITH SPANISH TAX LEGISLATION****Information Procedures and Certification Obligations of the Trustee or Paying Agent in respect of payments under the Subordinated Debt Securities**

1. *Delivery of the Payment Information Certificate:* In connection with each payment of income under the Subordinated Debt Securities, the Trustee or Paying Agent shall deliver to the Company by the close of business on the business day immediately preceding the day on which such payment is made a duly completed and executed Payment Information Certificate substantially in the form set forth in Exhibit I hereto (*Form of Payment Information Certificate*). Such form may be delivered initially by email, in pdf form, or by fax, provided that the original is delivered by the end of the following month.

If the Payment Information Certificate is delivered by the Trustee or Paying Agent in a timely manner to the Company, the relevant income payment will be made free and clear of Spanish withholding tax.

The Trustee or Paying Agent shall have no duty or responsibility to comply with Spanish tax laws arising out of this Subordinated Debt Securities Indenture, and may request and rely conclusively upon any instructions from the Company in respect of any action necessary or required to be taken by the Trustee or Paying Agent pursuant to this Appendix 1; *provided, however, that* in no event shall the Trustee or Paying Agent be required to expend or risk its own funds in the performance of any of its duties pursuant to this Appendix 1, or be obligated to take any legal or other action which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with acceptable indemnification.

The Company agrees to instruct the Trustee or Paying Agent in writing with respect to any certifications that may be required under Spanish law, and the Trustee or Paying Agent acknowledges that this Appendix 1 shall constitute an instruction in this regard, unless otherwise instructed in writing by the Company.

2. *Failure to deliver the Payment Information Certificate:* In the event that the Trustee or Paying Agent fails or for any reason is unable to deliver a timely, duly completed Payment Information Certificate as described above to the Company in respect of a payment of income under the Subordinated Debt Securities, the Trustee or Paying Agent shall withhold Spanish income tax on behalf of the Company from the relevant payment at the then-applicable rate (currently set at 19%).
3. If, after the relevant payment date but before the 10th day of the month immediately following the relevant payment date the Trustee or Paying Agent provides the duly completed Payment Information Certificate to the Company, then the Company shall instruct the Trustee or Paying Agent to immediately transfer the amounts withheld in respect of the relevant payment pursuant to



paragraph 1 above by way of reimbursement of the amounts withheld on the relevant payment date and completion of the corresponding income payment in respect of payments under the Subordinated Debt Securities.

4. If the Trustee or Paying Agent fails or for any reason is unable to submit a duly completed and executed Payment Information Certificate to the Company by the 10th day of the month immediately following the relevant payment date, the Trustee or Paying Agent shall immediately return (but in any event no later than the 10th day of the month immediately following the relevant payment date) to the Company any remaining amount of the 19% tax withheld in respect of the relevant payment, and investors will have to apply directly to the Spanish tax authorities for any refund to which they may be entitled.



200FX&amp;=&amp;eN3G!7#LW

**BANCO SANTANDER, S.A**

Donnelley Financial

VDI-W7-PR3-1078  
12.1.14

ADG martc0ma

01-Apr-2017 02:11 EST

**353001 EX4 3 95 4\*****FORM F-3**

NYC

HTM ESS 0C

Page 1 of 1

## EXHIBIT I

**Anexo al Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos, aprobado por Real Decreto 1065/2007**

**Modelo de declaración a que se refieren los apartados 3, 4 y 5 del artículo 44 del Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos**

Annex to Royal Decree 1065/2007, of 27 July, approving the General Regulations of the tax inspection and management procedures and developing the common rules of the procedures to apply taxes

Declaration form referred to in paragraphs 3, 4 and 5 of Article 44 of the General Regulations of the tax inspection and management procedures and developing the common rules of the procedures to apply taxes

**Don (nombre), con número de identificación fiscal ( )<sup>(1)</sup>, en nombre y representación de (entidad declarante), con número de identificación fiscal ( )<sup>(1)</sup> y domicilio en ( ) en calidad de (marcar la letra que proceda):**

Mr. (name), with tax identification number ( )<sup>(1)</sup>, in the name and on behalf of (entity), with tax identification number ( )<sup>(1)</sup> and address in ( ) as (function - mark as applicable):

**(a) Entidad Gestora del Mercado de Deuda Pública en Anotaciones.**

(a) Management Entity of the Public Debt Market in book entry form.

**(b) Entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero.**

(b) Entity that manages the clearing and settlement system of securities resident in a foreign country.

**(c) Otras entidades que mantienen valores por cuenta de terceros en entidades de compensación y liquidación de valores domiciliadas en territorio español.**

(c) Other entities that hold securities on behalf of third parties within clearing and settlement systems domiciled in the Spanish territory.

**(d) Agente de pagos designado por el emisor.**

(d) Fiscal Agent appointed by the issuer.



200FX&=eN3KeJhL6

**Formula la siguiente declaración, de acuerdo con lo que consta en sus propios registros:**

Makes the following statement, according to its own records:

**1. En relación con los apartados 3 y 4 del artículo 44:**

1. In relation to paragraphs 3 and 4 of Article 44:

**1.1 Identificación de los valores**

1.1 Identification of the securities

**1.2 Fecha de pago de los rendimientos (o de reembolso si son valores emitidos al descuento o segregados)**

1.2 Income payment date (or refund if the securities are issued at discount or are segregated)

**1.3 Importe total de los rendimientos (o importe total a reembolsar, en todo caso, si son valores emitidos al descuento o segregados)**

1.3 Total amount of income (or total amount to be refunded, in any case, if the securities are issued at discount or are segregated)

**1.4 Importe de los rendimientos correspondiente a contribuyentes del Impuesto sobre la Renta de las Personas Físicas, excepto cupones segregados y principales segregados en cuyo reembolso intervenga una Entidad Gestora**

1.4 Amount of income corresponding to Personal Income Tax taxpayers, except segregated coupons and segregated principals for which reimbursement an intermediary entity is involved

**1.5 Importe de los rendimientos que conforme al apartado 2 del artículo 44 debe abonarse por su importe íntegro (o importe total a reembolsar si son valores emitidos al descuento o segregados).**

1.5 Amount of income which according to paragraph 2 of Article 44 must be paid gross (or total amount to be refunded if the securities are issued at discount or are segregated).

**2. En relación con el apartado 5 del artículo 44.**

2. In relation to paragraph 5 of Article 44.

**2.1 Identificación de los valores**

2.1 Identification of the securities





200FX&=&eN31Fyvsn

**2.2 Fecha de pago de los rendimientos (o de reembolso si son valores emitidos al descuento o segregados)**

2.2 Income payment date (or refund if the securities are issued at discount or are segregated)

**2.3 Importe total de los rendimientos (o importe total a reembolsar si son valores emitidos al descuento o segregados)**

2.3 Total amount of income (or total amount to be refunded if the securities are issued at discount or are segregated)

**2.4 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero A.**

2.4 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country A.

**2.5 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero B.**

2.5 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country B.

**2.6 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero C.**

2.6 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country C.

**Lo que declaro en            a    de            de**

I declare the above in            on the    of            of

**(1) En caso de personas, físicas o jurídicas, no residentes sin establecimiento permanente se hará constar el número o código de identificación que corresponda de conformidad con su país de residencia**

(1) In case of non-residents (individuals or corporations) without permanent establishment in Spain it shall be included the number or identification code which corresponds according to their country of residence.



200FX&=eN37MRgLR

**BANCO SANTANDER, S.A**  
**FORM F-3**

Donnelley Financial

VDI-W7-PFL-1025  
12.1.14

ADG cabuj0ma

01-Apr-2017 02:05 EST

**353001 EX4 4 1** 4\*

NYC

HTM ESS 0C

Page 1 of 1

**Exhibit 4.4**

**BANCO SANTANDER, S.A.**

as Issuer

**TO**

**THE BANK OF NEW YORK MELLON,**  
acting through its London Branch  
as Trustee

**FORM OF INDENTURE**

**Contingent Convertible Capital Securities**

---

---



BANCO SANTANDER, S.A.

Reconciliation and tie between Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, and this Contingent Convertible Capital Securities Indenture, dated as of [                      ].

<u>Trust Indenture Act Section</u>	<u>Contingent Convertible Capital Securities Indenture Section</u>
§310 (a)(1)	7.10
(a)(2)	7.10
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(b)	7.09, 7.11
§311(a)	7.14
(b)	7.14
§312(a)	8.01, 8.02(a)
(b)	8.02(b)
(c)	8.02(c)
§313(a)	8.03(a)
(b)	8.03(a)
(c)	1.06, 8.03(a)
(d)	8.03(b)
§314(a)	8.04, 11.06
(b)	Not Applicable
(c)(1)	1.02
(c)(2)	1.02
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	1.02
(f)	Not Applicable
§315(a)	7.01
(b)	7.03, 8.03(a)
	8.03(a)
(c)	7.01
(d)	7.01
(d)(1)	7.01
(d)(2)	7.01
(d)(3)	7.01
(e)	6.15
§316(a)(1)(A)	6.14
(a)(1)(B)	6.16
(a)(2)	Not Applicable
(a)(last sentence)	1.01
(b)	6.10
§317(a)(1)	6.04
(a)(2)	6.06
(b)	11.03
§318(a)	1.08



200FX&=&eN3Ba%rs/

NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be a part of this Contingent Convertible Capital Securities Indenture.



**TABLE OF CONTENTS**

	<u>PAGE</u>
<b>ARTICLE 1</b>	
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION	
Section 1.01. <i>Definitions</i>	1
Section 1.02. <i>Compliance Certificates and Opinions</i>	22
Section 1.03. <i>Form of Documents Delivered to Trustee</i>	23
Section 1.04. <i>Acts of Holders</i>	24
Section 1.05. <i>Notices, Etc. to Trustee and Company</i>	25
Section 1.06. <i>Notice to Holders; Waiver</i>	26
Section 1.07. <i>Language of Notices, Etc</i>	26
Section 1.08. <i>Conflict with Trust Indenture Act</i>	26
Section 1.09. <i>Effect of Headings and Table of Contents</i>	27
Section 1.10. <i>Successors and Assigns</i>	27
Section 1.11. <i>Separability Clause</i>	27
Section 1.12. <i>Benefits of Contingent Convertible Capital Securities Indenture</i>	27
Section 1.13. <i>Governing Law</i>	27
Section 1.14. <i>Business Days and Legal Holidays</i>	28
Section 1.15. <i>Appointment of Agent for Service</i>	28
Section 1.16. <i>Calculation Agent</i>	29
Section 1.17. <i>Waiver of Jury Trial</i>	29
Section 1.18. <i>Judgment Currency</i>	29
<b>ARTICLE 2</b>	
CONTINGENT CONVERTIBLE CAPITAL SECURITY FORMS	
Section 2.01. <i>Forms Generally</i>	30
Section 2.02. <i>Form of Trustee's Certificate of Authentication</i>	30
<b>ARTICLE 3</b>	
THE CONTINGENT CONVERTIBLE CAPITAL SECURITIES	
Section 3.01. <i>Amount Unlimited; Issuable in Series</i>	30
Section 3.02. <i>Denominations</i>	33
Section 3.03. <i>Execution, Authentication, Delivery and Dating</i>	33
Section 3.04. <i>Temporary Contingent Convertible Capital Securities</i>	34
Section 3.05. <i>Registration, Registration of Transfer and Exchange</i>	35
Section 3.06. <i>Mutilated, Destroyed, Lost and Stolen Contingent Convertible Capital Securities</i>	39
Section 3.07. <i>Distributions. Rights Preserved</i>	40
Section 3.08. <i>Distributions Discretionary</i>	41
Section 3.09. <i>Restrictions on Payments</i>	41
Section 3.10. <i>Agreement to Distribution Cancellation</i>	42
Section 3.11. <i>Notice of Distribution Cancellation</i>	42
Section 3.12. <i>Persons Deemed Owners</i>	43



Section 3.13.	<i>Cancellation</i>	44
Section 3.14.	<i>Computation of Distributions</i>	44
Section 3.15.	<i>Cusip Numbers</i>	44
Section 3.16.	<i>Additional Contingent Convertible Capital Securities</i>	45
Section 3.17.	<i>Correction of Minor Defects in or Amendment of Contingent Convertible Capital Securities</i>	45
Section 3.18.	<i>Payments Subject to Fiscal Laws</i>	46
Section 3.19.	<i>Undertakings</i>	46

**ARTICLE 4**  
CONVERSION OF THE CONTINGENT CONVERTIBLE CAPITAL SECURITIES

Section 4.01.	<i>Conversion upon Trigger Event</i>	47
Section 4.02.	<i>Conversion Price</i>	49
Section 4.03.	<i>Anti-Dilution Adjustment of the Floor Price</i>	49
Section 4.04.	<i>Conversion Procedures. Settlement Shares</i>	62
Section 4.05.	<i>Agreement and Waiver with Respect to Trigger Conversion</i>	64
Section 4.06.	<i>Settlement Procedures</i>	64
Section 4.07.	<i>Failure to Deliver a Delivery Notice</i>	67
Section 4.08.	<i>Delivery of ADSs</i>	68

**ARTICLE 5**  
SATISFACTION AND DISCHARGE

Section 5.01.	<i>Satisfaction and Discharge of Contingent Convertible Capital Securities Indenture</i>	68
Section 5.02.	<i>Application of Trust Money</i>	69
Section 5.03.	<i>Repayment to Company</i>	69
Section 5.04.	<i>Reinstatement</i>	69

**ARTICLE 6**  
REMEDIES

Section 6.01.	<i>Enforcement Events</i>	70
Section 6.02.	<i>Liquidation Distribution</i>	71
Section 6.03.	<i>Limitation of Remedies Upon an Enforcement Event</i>	71
Section 6.04.	<i>No Other Remedies and Other Terms</i>	71
Section 6.05.	<i>Agreement with Respect to Limitation of Remedies for Breach of a Performance Obligation</i>	72
Section 6.06.	<i>Trustee May File Proofs of Claim</i>	73
Section 6.07.	<i>Trustee May Enforce Claims Without Possession of Contingent Convertible Capital Securities</i>	73
Section 6.08.	<i>Application of Money Collected</i>	74
Section 6.09.	<i>Limitation on Suits</i>	74
Section 6.10.	<i>Unconditional Right of Holders to Receive Liquidation Preference and Distributions</i>	75
Section 6.11.	<i>Restoration of Rights and Remedies</i>	75



Section 6.12.	<i>Rights and Remedies Cumulative</i>	75
Section 6.13.	<i>Delay or Omission Not Waiver</i>	76
Section 6.14.	<i>Control by Holders</i>	76
Section 6.15.	<i>Undertaking for Costs</i>	76
Section 6.16.	<i>Waiver of Past Enforcement Events</i>	77

ARTICLE 7  
THE TRUSTEE

Section 7.01.	<i>Certain Duties and Responsibilities</i>	77
Section 7.02.	<i>Spanish Tax Procedures and Obligations of the Trustee</i>	78
Section 7.03.	<i>Notice of Enforcement Events</i>	79
Section 7.04.	<i>Certain Rights of Trustee</i>	79
Section 7.05.	<i>Not Responsible for Recitals or Issuance of Contingent Convertible Capital Securities</i>	81
Section 7.06.	<i>May Hold Contingent Convertible Capital Securities</i>	82
Section 7.07.	<i>Money Held in Trust</i>	82
Section 7.08.	<i>Compensation and Reimbursement</i>	82
Section 7.09.	<i>Disqualification; Conflicting Interests</i>	83
Section 7.10.	<i>Corporate Trustee Required; Eligibility</i>	83
Section 7.11.	<i>Resignation and Removal; Appointment of Successor</i>	84
Section 7.12.	<i>Acceptance of Appointment by Successor</i>	86
Section 7.13.	<i>Merger, Conversion, Consolidation or Succession to Business</i>	87
Section 7.14.	<i>Preferential Collection of Claims</i>	87
Section 7.15.	<i>Appointment of Authenticating Agent</i>	87
Section 7.16.	<i>Appointment of Additional Trustees</i>	89
Section 7.17.	<i>Tax Withholding</i>	89

ARTICLE 8  
HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 8.01.	<i>Company to Furnish Trustee Names and Addresses of Holders</i>	90
Section 8.02.	<i>Preservation of Information; Communication to Holders</i>	90
Section 8.03.	<i>Reports by Trustee</i>	91
Section 8.04.	<i>Reports by Company</i>	91

ARTICLE 9  
CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER

Section 9.01.	<i>Company May Consolidate, Etc., Only on Certain Terms</i>	92
Section 9.02.	<i>Successor Corporation Substituted</i>	93
Section 9.03.	<i>Assumption of Obligations</i>	93

ARTICLE 10  
SUPPLEMENTAL INDENTURES

Section 10.01.	<i>Supplemental Indenture without Consent of Holders</i>	95
Section 10.02.	<i>Supplemental Indentures with Consent of Holders</i>	96



Section 10.03. *Execution of Supplemental Indentures* 98  
Section 10.04. *Effect of Supplemental Indentures* 98  
Section 10.05. *Conformity with Trust Indenture Act* 98  
Section 10.06. *Reference in Contingent Convertible Capital Securities to Supplemental Indentures* 98

**ARTICLE 11**  
**COVENANTS**

Section 11.01. *Payment of Liquidation Preference and Distributions* 99  
Section 11.02. *Maintenance of Office or Agency* 99  
Section 11.03. *Money for Distributions to be Held in Trust* 100  
Section 11.04. *Additional Amounts* 101  
Section 11.05. *Corporate Existence* 104  
Section 11.06. *Statement as to Compliance* 104

**ARTICLE 12**  
**REDEMPTION AND REPURCHASE OF CONTINGENT CONVERTIBLE CAPITAL SECURITIES**

Section 12.01. *Applicability of Article* 104  
Section 12.02. *Election to Redeem; Notice to Trustee* 104  
Section 12.03. *Selection by Trustee of Contingent Convertible Capital Securities to be Redeemed* 104  
Section 12.04. *Redemption Procedures; Notice of Redemption* 105  
Section 12.05. *Deposit of Redemption Price* 106  
Section 12.06. *Contingent Convertible Capital Securities Payable on Redemption Date* 106  
Section 12.07. *Contingent Convertible Capital Securities Redeemed In Part* 107  
Section 12.08. *Optional Redemption Due To Changes In Tax Treatment* 107  
Section 12.09. *Optional Redemption Due To Capital Event* 107  
Section 12.10. *Repurchase of Contingent Convertible Capital Securities* 108  
Section 12.11. *Optional Redemption* 108  
Section 12.12. *Cancelled Distributions Not Payable Upon Redemption* 108

**ARTICLE 13**  
**SUBORDINATION OF CONTINGENT CONVERTIBLE CAPITAL SECURITIES**

Section 13.01. *Contingent Convertible Capital Securities Subordinate to Senior Claims* 108  
Section 13.02. *Waiver of Right of Set-Off* 109  
Section 13.03. *Provisions Solely to Define Relative Rights* 110  
Section 13.04. *Trustee to Effectuate Subordination* 110  
Section 13.05. *Trustee Not Fiduciary for Senior Creditors* 110  
Section 13.06. *Rights of Trustee as Senior Creditor; Preservation of Trustee's Rights* 111  
Section 13.07. *Article Applicable to Paying Agents* 111





200FX&=&eN31xY%Ly

ARTICLE 14  
BAIL-IN AND RESOLUTION ACTIONS

Section 14.01. *Agreement and Acknowledgment with Respect to the Exercise of the Bail-in Power*

111



CONTINGENT CONVERTIBLE CAPITAL SECURITIES INDENTURE, dated as of [●] between BANCO SANTANDER, S.A., a *sociedad anónima* incorporated under the laws of the Kingdom of Spain (the “**Company**” or “**Banco Santander**”), having its principal executive office located at Ciudad Grupo Santander, Avenida de Cantabria s/n, 28660 Boadilla del Monte, Madrid, Spain, and THE BANK OF NEW YORK MELLON, acting through its London Branch, a banking corporation duly organized and existing under the laws of the State of New York as Trustee (the “**Trustee**”), having its Corporate Trust Office at One Canada Square, London, E14 5AL, United Kingdom.

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Contingent Convertible Capital Securities Indenture to provide for the issuance from time to time of its Contingent Convertible Capital Securities (herein called the “**Contingent Convertible Capital Securities**”), to be issued in one or more series, represented by one or more Global Securities in registered form, or represented by definitive Contingent Convertible Capital Securities in registered form, the amount and terms of each such series to be determined as hereinafter provided.

All things necessary to make this Contingent Convertible Capital Securities Indenture a valid and binding agreement of the Company, in accordance with its terms, have been done.

This Contingent Convertible Capital Securities Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder that are required to be part of this Contingent Convertible Capital Securities Indenture and, to the extent applicable, shall be governed by such provisions.

NOW, THEREFORE, THIS CONTINGENT CONVERTIBLE CAPITAL SECURITIES INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Contingent Convertible Capital Securities by the Holders (as defined herein) thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of Contingent Convertible Capital Securities, as follows:

ARTICLE 1  
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. *Definitions.* For all purposes of this Contingent Convertible Capital Securities Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;



(b) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles and, except as otherwise herein expressly provided, the term “generally accepted accounting principles” with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the Kingdom of Spain at the date of such computation and as applied by the Company;

(d) the words “**herein**,” “**hereof**” and “**hereunder**” and other words of similar import refer to this Contingent Convertible Capital Securities Indenture as a whole and not to any particular Article, Section or other subdivision;

(e) any reference to an “**Article**” or a “**Section**” refers to an Article or Section of this Contingent Convertible Capital Securities Indenture; and

(f) the word “or” is always used inclusively (for example, the phrase “A or B” means “A or B or both”, not “either A or B but not both”).

Certain terms, used principally in certain Articles hereof are defined in those Articles.

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 in accordance therewith or under such modification or re-enactment.

“**Accounting Currency**” means euro or such other primary currency used in the presentation of the Group’s accounts from time to time;

“**Act**”, when used with respect to any Holder, has the meaning specified in Section 1.04.

“**Additional Amounts**” has the meaning set forth in Section 11.04, of this Agreement.

“**Additional Contingent Convertible Capital Securities**” has the meaning set forth in Section 3.16.

“**Additional Tier 1 Instrument**” means any contractually subordinated obligation (*crédito subordinado*) of Banco Santander according to Article 92.2° of the Spanish Insolvency Law, ranking as an additional tier 1 instrument (*instrumentos de capital adicional de nivel 1*) under Additional Provision 14.2°. (c) of Law 11/2015.



“**ADR Deposit Agreement**” means the Deposit Agreement dated as of September 22, 2016, and as may be amended from time to time between the Company, The Bank of New York Mellon and the holders from time to time of American Depositary Receipts issued thereunder.

“**ADS Depository**” means The Bank of New York Mellon, as the depository under the ADR Deposit Agreement or any successor ADS depository.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Agents**” means the agents appointed in accordance with this Contingent Convertible Capital Securities Indenture or applicable supplemental indenture.

“**Agent Member**” means a member of, or participant in, any Depository.

“**Amounts Due**” means the Liquidation Preference, together with any accrued but unpaid Distributions, and Additional Amounts, if any, due on the Contingent Convertible Capital Securities of any series. References to such amounts will include amounts that have become due and payable, but which have not been paid, prior to the exercise of the Bail-in Power by the Relevant Resolution Authority.

“**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 Company and/or the Group including, without limitation to the generality of the foregoing, those regulations, requirements, guidelines and policies relating to capital adequacy, resolution and/or solvency then in effect of the Regulator (whether or not such requirements, guidelines or policies have the force of law and whether or not they are applied generally or specifically to Banco Santander and/or the Group).

“**Authenticating Agent**” means any Person authorized by the Trustee to act on behalf of the Trustee to authenticate Contingent Convertible Capital Securities.

“**Authorized Newspaper**” means a newspaper, in an official language of the place of publication or in the English language, customarily published on each day that is a Business Day in the place of publication, whether or not published on days that are Legal Holidays in the place of publication, and of general circulation in each place in connection with which the term is used or in the financial community of each such place. Where successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different newspapers in the same city meeting the foregoing requirements and in each case on any day that is a Business Day in the place of publication.



“**Available Distributable Items**” means, in respect of the payment of a Distribution at any time, those profits and reserves (if any) of the Company which are available, in accordance with Applicable Banking Regulations, for the payment of such Distribution.

“**Bail-in Power**” means any statutory write-down and/or conversion power existing from time to time under any laws, regulations, rules or requirements in effect in the Kingdom of Spain relating to the resolution of Regulated Entities applicable to Banco Santander or other Regulated Entities of the group, including (but not limited to) (i) the transposition of the BRRD (including but not limited to, Law 11/2015, Royal Decree 1012/2015 and any other implementing regulations) as amended or superseded from time to time, (ii) Regulation (EU) No. 806/2014 of the European Parliament and of 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 superseded from time to time, the “**SRM Regulation**”) and (iii) the instruments, rules and standards created thereunder, pursuant to which any obligation of a Regulated Entity (or an affiliate of such Regulated Entity) can be reduced, cancelled and/or converted into shares or other securities or obligations of such Regulated Entity (or affiliate of such Regulated Entity) or any other person.

“**Board of Directors**” means either the board of directors of the Company or any committee or Person duly authorized to act generally or in any particular respect for the Company hereunder.

“**Board Resolution**” means a copy of a resolution certified by the Secretary or a Deputy Assistant Secretary or any Person duly authorized by the Company to have been duly adopted by the relevant Board of Directors or an authorized committee thereof and to be in full force and effect on the date of such certification and delivered to the Trustee.

“**BRRD**” means Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, as amended or superseded from time to time.

“**Business Day**” means, unless otherwise provided in the form of Contingent Convertible Capital Securities for any particular series pursuant to the provisions of this Contingent Convertible Capital Securities Indenture, any day, other than Saturday or Sunday, that is neither a Legal Holiday nor a day on which banking institutions are authorized or required by law, regulation or executive order to close in the City of New York, London, Madrid or any other place or places where the Liquidation Preference of, or any Distributions on, or any Additional Amounts with respect to the Contingent Convertible Capital Securities of that series are payable.

“**Calculation Agent**” means the Trustee or such other person authorized by the Company as the party responsible for calculating the Distributions and/or such other amount(s) from time to time in relation to any series of Contingent Convertible Capital Securities.



“**Capital Event**” means a change in Spanish law, Applicable Banking Regulations or any change in the application or official interpretation thereof that the Company determines results or is likely to result in the entire outstanding aggregate Liquidation Preference of the Contingent Convertible Capital Securities of the relevant series ceasing to be included in, or counting towards, the Group’s or the Company’s Tier 1 Capital.

“**Cash Dividend**” means (i) any Dividend which is to be paid or made in cash (in whatever currency), but other than falling within paragraph (b) of the definition of “Spin-Off” and (ii) any Dividend determined to be a Cash Dividend pursuant to paragraph (a) of the definition of “Dividend”, but a Dividend falling within paragraph (c) or (d) of the definition of “Dividend” shall be treated as being a Non-Cash Dividend.

“**CET1 Capital**” means at any time, the Common Equity Tier 1 capital of the Company or the Group, respectively, as calculated in accordance with Chapter 2 (Common Equity Tier 1 Capital) of Title I (Elements of own funds) of Part Two (Own Funds) of the CRR and/or Applicable Banking Regulations at such time, including any applicable transitional, phasing in or similar provisions.

“**CET1 ratio**” means, at any time, with respect to the Company 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 Company or the Group, respectively, at such time divided by the Risk Weighted Assets Amount of the Company or the Group, respectively, at such time.

“**Clearing System**” means DTC or any of the European Clearing Systems, as applicable.

“**Clearing System Contingent Convertible Capital Securities**” means, for so long as any Contingent Convertible Capital Securities of a series is represented by a global Contingent Convertible Capital Security held by or on behalf of a Clearing System, any particular Liquidation Preference of such series of the Contingent Convertible Capital Securities shown in the records of a Clearing System as being held by a holder of the Contingent Convertible Capital Securities of such series.

“**CNMV**” means the Spanish Market Securities Commission (*Comisión Nacional del Mercado de Valores*).

“**Commission**” means the United States Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“**Common Shares**” means ordinary shares in the capital of the Company, each of which confers on the holder one vote at general meetings of the Company and is credited as fully paid up.



“**Company**” means the Person named as the “**Company**” in the first paragraph of this Contingent Convertible Capital Securities Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Contingent Convertible Capital Securities Indenture, and thereafter “**Company**” shall mean such successor Person.

“**Company Request**” and “**Company Order**” mean, respectively, a written request or order, as the case may be, signed in the name of the Company by any member of the Board of Directors or any officer or representative of the Company empowered to do so by Board Resolution, and delivered to the Trustee.

“**Contingent Convertible Capital Securities**” has the meaning set forth in the recitals of the Company herein and more particularly means any series of Contingent Convertible Capital Securities issued, authenticated and delivered under this Contingent Convertible Capital Securities Indenture.

“**Contingent Convertible Capital Securities Indenture**” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms and forms of particular series of Contingent Convertible Capital Securities established pursuant to Section 3.01.

“**Contingent Convertible Capital Security**” means one of the Contingent Convertible Capital Securities.

“**Contingent Convertible Capital Security Register**” and “**Contingent Convertible Capital Security Registrar**” have the respective meanings specified in Section 3.05.

“**Conversion Price**” means, in respect of the Trigger Event Notice Date, if the Common Shares are:

(a) then admitted to trading on a Relevant Stock Exchange, the higher of:

(i) the Current Market Price of a Common Share, translated into U.S. dollars at the Prevailing Rate;

(ii) the Floor Price; and

(iii) the nominal value of a Common Share, in each case on the Trigger Event Notice Date, translated into U.S. dollars at the Prevailing Rate; or

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

For the avoidance of doubt, the translation into U.S. dollars at the Prevailing Rate described above shall in no circumstances imply that any Common Share will be issued at a price of less than its nominal value expressed in the Share Currency.



“**Conversion Settlement Date**” means the date on which the relevant Common Shares are to be delivered following 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 may require) the Trigger Event Notice Date and notice of the expected Conversion Settlement Date and of the Conversion Price shall be given to Holders of Contingent Convertible Capital Securities in accordance with Section 1.06 not more than 10 Business Days following the Trigger Event Notice Date.

“**Conversion Shares**” means the number of Common Shares to be issued on Trigger Conversion in respect of each Contingent Convertible Capital Security of any series to be converted.

“**Contingent Convertible Capital Securities Indenture**” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms and forms of particular series of Contingent Convertible Capital Securities established pursuant to Section 3.01.

“**Conversion Event**” means the cessation of use of (i) a Foreign Currency both by the government of the country which issued such currency and for the settlement of transactions by a central bank or other public institutions of or within the international banking community, or (ii) the euro both within the European monetary system and for the settlement of transactions by public institutions of or within the European Union.

“**Corporate Trust Office**” means the office of the Trustee at which its corporate trust business in London, England is principally administered, which office as of the date hereof is located at One Canada Square, London E14 5AL (Attention: Corporate Trust Administration, facsimile: +44 20 7964 2536) or, if a different Trustee is appointed for a particular series of Contingent Convertible Capital Securities, the address set forth in the supplemental indenture naming the Trustee for that particular series of Contingent Convertible Capital Securities.

The term “**corporation**” includes corporations, associations, companies, partnerships and business trusts.

“**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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC or such other directive as may come into effect in place thereof.

“**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 Regulator, the European Banking Authority or any other relevant authority, which are applicable to the Company (on a standalone basis) or the Group (on a consolidated basis).

“**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 and amending Regulation (EU) No. 648/2012 or such other regulation as may come into effect in place thereof.

“**Current Market Price**” means, in respect of a Common Share at a particular date, the average of the daily Volume Weighted Average Price of a Common Share on each of the 5 consecutive dealing days ending on the dealing day immediately preceding such date (the “Relevant Period”) (rounded if necessary to the nearest cent with 0.5 cents being rounded upwards); provided that 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 Common 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 Common Shares shall have been based on a price cum-Dividend (or cum-any other entitlement) shall for the purposes of this definition be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Dividend or entitlement per Common Share as at the date of the first public announcement relating to such Dividend or entitlement; or

(b) if the Common 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 Common Shares shall have been based on a price ex-Dividend (or ex-any other entitlement) shall for the purposes of this definition be deemed to be the amount thereof increased by an amount equal to the Fair Market Value of any such Dividend or entitlement per Common Share as at the date of the first public announcement relating to such Dividend or entitlement,

and provided further that:

(i) 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 Common 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 Common Share as at the date of first public announcement relating to such Dividend or entitlement; and



(ii) if the Volume Weighted Average Price of a Common 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 the Current Market Price shall be determined in good faith by an Independent Financial Adviser.

In making any calculation or determination of Current Market Price, such adjustments (if any) shall be made as an Independent Financial Adviser determines in good faith appropriate to reflect any consolidation or sub-division of the Common Shares or any issue of Common Shares by way of capitalization of profits or reserves, or any like or similar event.

“**dealing day**” means a day on which the Relevant Stock Exchange or relevant stock exchange or securities market is open for business and on which Common Shares, Securities, Spin-Off Securities, options, warrants or other rights (as the case may be) may be dealt in (other than a day on which the Relevant Stock Exchange or relevant stock exchange or securities market is scheduled to or does close prior to its regular weekday closing time).

“**Delivery Notice**” means a notice in the form for the time being currently available from the specified office of any Paying and Conversion Agent or in such form as may be acceptable to DTC from time to time, which contains the relevant account and related details for the delivery of any ADSs or Common Shares and all relevant certifications and/or representations as may be required by applicable law and regulations (or is deemed to constitute the confirmation thereof), and which are required to be delivered in connection with a conversion of the Contingent Convertible Capital Securities and the delivery of the ADSs or Common Shares.

“**Depository**” means, with respect to any series of Contingent Convertible Capital Securities, a clearing agency that is designated to act as Depository for the Global Securities evidencing all or part of such Contingent Convertible Capital Securities as contemplated by Section 3.01.

“**Distribution**” means the non-cumulative cash distribution in respect of the Contingent Convertible Capital Securities and a Distribution Period determined in accordance with Section 3.07.

“**Distribution Payment Date**” shall have the meaning as determined pursuant to Section 3.01.

“**Distribution Period**” means the period from and including one Distribution Payment Date (or, in the case of the first Distribution Period, the date of issuance) to but excluding the next Distribution Payment Date.



“**Distribution Rate**” means the rate at which the Contingent Convertible Capital Securities accrue Distributions in accordance with Section 3.07.

“**Dividend**” means any dividend or distribution to Shareholders in respect of the Common 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 Common Shares or other Securities credited as fully or partly paid up by way of capitalization of profits or reserves), and however described and whether payable out of 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) a Dividend in cash is announced which is to be, or may at the election of a Shareholder or Shareholders be, satisfied by the issue or delivery of Common Shares or other property or assets, or where a capitalization of profits or reserves is announced which is to be, or may at the election of a Shareholder or Shareholders be, satisfied by the payment of cash, then the Dividend 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 and (B) the Current Market Price of such Common Shares as at the first date on which the Common Shares are traded ex-the relevant Dividend on the Relevant Stock Exchange or, as the case may be, the record date or other due date for establishment of entitlement in respect of the relevant capitalization or, as the case may be, the Fair Market Value of such other property or assets as at the date of the first public announcement of such Dividend or capitalization or, in any such case, if later, the date on which the number of Common Shares (or amount of such other property or assets, as the case may be) which may be issued and delivered is determined; or

(ii) there shall be any issue of Common Shares by way of capitalization 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 would otherwise be payable to Shareholders, whether at their election or otherwise), the Dividend in question shall be treated as a Cash Dividend of an amount equal to the Current Market Price of such Common Shares as at the first date on which the Common Shares are traded ex-the relevant Dividend on the Relevant Stock Exchange or, as the case may be, the record date or other due date for establishment of entitlement in respect of the relevant capitalization or, in any such case, if later, the date on which the number of Common Shares to be issued and delivered is determined;

(b) any issue of Common Shares falling within Section 4.03(a) and Section 4.03(b) shall be disregarded;

(c) a purchase or redemption or buy back of share capital of the Company by or on behalf of the Company in accordance with any general authority for such purchases or buy backs approved by a general meeting of Shareholders and otherwise in accordance



200FX&=&eN32LdRsW

with the limitations prescribed under the Spanish Companies Act 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 Company by or on behalf of the Company or any member of the Group shall not constitute a Dividend unless, in the case of a purchase or redemption or buy back of Common Shares by or on behalf of the Company or any member of the Group, the weighted average price per Common 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 percent. the average of the daily Volume Weighted Average Price of a Common Share on the 5 dealing days immediately preceding 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 Common Shares at some future date at a specified price or where a tender offer is made, on the 5 dealing days immediately preceding 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 Common Share, a minimum price per Common 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 Common Shares purchased, redeemed or bought back by the Company 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 (i) 105 percent. of the daily Volume Weighted Average Price of a Common Share determined as aforesaid and (ii) the number of Common Shares so purchased, redeemed or bought back;

(d) if the Company or any member of the Group shall purchase, redeem or buy back any depositary or other receipts or certificates representing Common 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 Company for the purpose of enabling Shareholders to elect, or which may require Shareholders, to receive dividends or distributions in respect of the Common Shares held by them from a person other than (or in addition to) the Company, such dividend or distribution shall for the purposes of these Contingent Convertible Capital Securities of any series be treated as a dividend or distribution made or paid to Shareholders by the Company, and the provisions of the Contingent Convertible Capital Securities and this Contingent Convertible Capital Securities Indenture, including references to the Company paying or making a dividend, shall be construed accordingly.



“**Dollar**” or “**\$**” or any similar reference means the coin or currency of the United States of America which as at the time of payment is legal tender for the payment of public and private debts.

“**DTC**” means The Depository Trust Company or its nominee or its or their successor.

“**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;

“**Enforcement Event**” shall have the meaning given in Section 6.01.

“**EUR**”, “**€**” and “**euro**” means currency of the member states of the European Union (“**EU**”) that, from time to time, have adopted the single currency in accordance with the treaty establishing the European Community, as amended from time to time.

“**European Clearing System**” means Euroclear Bank S.A./N.V. (“**Euroclear Bank**”), as operator of the Euroclear System (“**Euroclear**”) and/or Clearstream Banking, société anonyme (“**Clearstream Luxembourg**”);

“**Exchange Act**” means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the Commission thereunder.

“**Existing Shareholders**” has the meaning given in the definition of “**Newco Scheme**”.

“**Fair Market Value**” means, with respect to any property on any date, the fair market value of that property as determined by an Independent Financial Adviser in good faith provided that (a) the Fair Market Value of a Cash Dividend shall be the amount of such Cash Dividend; (b) the Fair Market Value of any other cash amount shall be the amount of such cash; (c) where Securities, Spin-Off Securities, options, warrants or other rights are publicly traded on a stock exchange or securities market of adequate liquidity (as determined by an Independent Financial Adviser in good faith), the Fair Market Value (i) of such Securities or Spin-Off Securities shall equal the arithmetic mean of the daily Volume Weighted Average Prices of such Securities or Spin-Off Securities and (ii) of such options, warrants or other rights shall equal the arithmetic mean of the daily closing prices of such options, warrants or other rights, in the case of both (i) and (ii) above during the period of 5 dealing days on the relevant stock exchange or securities market commencing on such date (or, if later, the first such dealing day such Securities, Spin-Off Securities, options, warrants or other rights are publicly traded) or such shorter period as such Securities, Spin-Off Securities, options, warrants or other rights are publicly traded; and (d) where Securities, Spin-Off Securities, options, warrants or other rights are not publicly traded on a stock exchange or securities market of adequate liquidity (as aforesaid), the Fair Market Value of such Securities, Spin-Off Securities, options, warrants or other rights shall be determined by an Independent Financial Adviser in good faith, on the basis of a commonly accepted market valuation method and taking account of such factors as it considers appropriate, including the market price per Common Share,



the dividend yield of a Common 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.

“**Final Cancellation Date**” shall have the meaning given in Section 4.06.

“**Floor Price**” means the price per Common Share determined pursuant to Section 3.01, subject to adjustment in accordance with Section 4.03.

“**Foreign Currency**” means the euro or any currency issued by the government of any country (or a group of countries or participating member states) other than the United States of America which as at the time of payment is legal tender for the payment of public and private debts.

“**Foreign Government Securities**” means with respect to Contingent Convertible Capital Securities, if any, of any series that are denominated in a Foreign Currency, non-callable (i) direct obligations of the participating member state or government that issued such Foreign Currency for the payment of which obligations its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of such participating member state or government, the payment of which obligations is unconditionally guaranteed as a full faith and credit obligation of such participating member state or government. For the avoidance of doubt, for all purposes hereof, euro shall be deemed to have been issued by each participating member state from time to time.

“**Further Contingent Convertible Capital Securities**” means any securities which are contingently convertible into Common Shares of the Company pursuant to their terms in the event that the CET1 ratio of the Company or the Group is less than a specified percentage.

“**Global Security**” means one or more global certificates evidencing all or part of a series of Contingent Convertible Capital Securities, authenticated and delivered to or on behalf of the Holder and registered in the name of the Holder or its nominee.

“**Group**” means Banco Santander, S.A. and its consolidated subsidiaries.

“**Holder**” means a Person in whose name a Contingent Convertible Capital Security in global or definitive form is registered in the Contingent Convertible Capital Security Register.



200FX&=&eN32XwdL4

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

“**Independent Financial Adviser**” means an independent financial institution of international repute appointed by the Company at its own expense.

“**Initial Margin**” means the per cent per annum determined in accordance with Section 3.01.

“**Law 11/2015**” means Law 11/2015, of June 18, for the recovery and resolution of credit institutions and investment firms (*Ley 11/2015, de 18 de junio, de recuperacion y resolucion de entidades de credito y empresas de servicios de inversion*), as amended from time to time.

“**Legal Holiday**”, with respect to any Place of Payment or other location, means a Saturday, a Sunday or a day on which banking institutions in such Place of Payment or other location are not authorized or obligated to be open.

“**Liquidation Distribution**” means the Liquidation Preference per Contingent Convertible Capital Security plus, if applicable, where not cancelled pursuant to, or otherwise subject to the limitations on payment set out in Section 3.08 and Section 3.09, 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 Event**” shall have the meaning set forth in Section 6.01.

“**Liquidation Preference**” shall have the meaning as determined pursuant to Section 3.01.

“**Maximum Distributable Amount**” means any maximum distributable amount required to be calculated in accordance with article 48 of Law 10/2014 and articles 73 and 74 of Royal Decree 84/2015, each interpreted in light of article 141 of the CRD IV Directive.

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

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

(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 proportions as their respective holdings of such Voting Rights immediately prior to the Scheme of Arrangement;



(c) immediately after completion of the Scheme of Arrangement, Newco is (or one or more wholly-owned Subsidiaries of Newco are) the only ordinary shareholder (or shareholders) of the Company;

(d) all Subsidiaries of the Company immediately prior to the Scheme of Arrangement (other than Newco, if Newco is then a Subsidiary) are Subsidiaries of the Company (or of Newco) immediately after completion of the Scheme of Arrangement; and

(e) immediately after completion of the Scheme of Arrangement, the Company (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 Company 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.

“**Officer’s Certificate**” means a certificate signed by any member of the Board of Directors, the Secretary or the Deputy Secretary of the Board of Directors, a Vice President or any officer or any other Person duly authorized by the Company, that complies with the requirements of Section 314(e) of the Trust Indenture Act and is delivered to the Trustee.

“**Opinion of Counsel**” means a written opinion of legal advisors, who may be an employee of or legal advisors for the Company or other legal advisors who shall be reasonably acceptable to the Trustee and that, if required by the Trust Indenture Act, complies therewith.

“**Outstanding**”, when used with respect to Contingent Convertible Capital Securities or any series of Contingent Convertible Capital Securities means, as of the date of determination, all Contingent Convertible Capital Securities or all Contingent Convertible Capital Securities of such series, as the case may be, theretofore authenticated and delivered under this Contingent Convertible Capital Securities Indenture, except:

(i) Contingent Convertible Capital Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(ii) Contingent Convertible Capital Securities which have been paid pursuant to Section 12.06 or in exchange for or in lieu of which other Contingent Convertible Capital Securities have been authenticated and delivered pursuant to this Contingent Convertible Capital Securities Indenture, other than any such Contingent Convertible Capital Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Contingent Convertible Capital Securities are held by a bona fide purchaser in whose hands such Contingent Convertible Capital Securities are valid obligations of the Company;





provided, however, that in determining whether the Holders of the requisite Liquidation Preference of the Outstanding Contingent Convertible Capital Securities of any series have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (i) the Liquidation Preference of a Contingent Convertible Capital Security denominated in a Foreign Currency shall be the Dollar equivalent, determined on the date of original issuance of such Contingent Convertible Capital Security, of the Liquidation Preference of such Contingent Convertible Capital Security; and (ii) Contingent Convertible Capital Securities beneficially owned by the Company or any other obligor upon the Contingent Convertible Capital Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Contingent Convertible Capital Securities which a Responsible Officer of the Trustee actually knows to be so beneficially owned shall be so disregarded; provided, further, however, that Contingent Convertible Capital Securities so beneficially owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Contingent Convertible Capital Securities and that the pledgee is not the Company or any other obligor upon the Contingent Convertible Capital Securities or any Affiliate of the Company or of such other obligor.

**“Parity Securities”** means any preferred securities (*participaciones preferentes*) issued under Law 13/1985 and/or Royal Decree - Law 14/2013 of 29 November (“RD-L 14/2013) and/or Law 10/2014 and/or under the CRR from time to time by the Company or by any Subsidiary and which are guaranteed by the Company or any preferential participations, preferential shares or preference shares (*acciones preferentes*) ranking *pari passu* with any preferred securities (*participaciones preferentes*) issued from time to time by the Company or by any Subsidiary and which are guaranteed by the Company or any other instrument issued or guaranteed by the Company ranking *pari passu* with the Contingent Convertible Capital Securities.

**“Paying and Conversion Agent”** means the Principal Paying Agent and any other paying and conversion agent appointed in accordance with this Contingent Convertible Capital Securities Indenture or any supplemental indenture and includes any successors thereto appointed from time to time in accordance with this Contingent Convertible Capital Securities Indenture or any supplemental indenture.

**“Payment Business Day”** means (i) 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 New York City and London and (ii) in the case of Contingent Convertible Capital Securities in definitive form only, 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 the relevant place of presentation.



“**Payment Statement**” means the statement to be delivered to the Company by the Trustee, substantially in the form set forth in Exhibit I to Appendix 1, pursuant to Section 7.02.

“**Person**” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“**Place of Payment**”, when used with respect to the Contingent Convertible Capital Securities of any series, means the place or places where the Liquidation Preference and Distributions on the Contingent Convertible Capital Securities of that series are payable as specified pursuant to Section 3.01 or, if not so specified, as specified in Section 11.02.

“**Predecessor Security**” of any particular Contingent Convertible Capital Security means every previous Contingent Convertible Capital Security evidencing all or a portion of the same debt as that evidenced by such particular Contingent Convertible Capital Security; and, for the purposes of this definition, any Contingent Convertible Capital Security authenticated and delivered under Section 3.06 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Contingent Convertible Capital Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Contingent Convertible Capital Security.

“**Prevailing Rate**” means, in respect of any currencies on any day, the spot rate of exchange between the relevant currencies prevailing as at 12 noon (London time) on that date as appearing on or derived from Reuters page ECB37 or, if not available, from any other Reference Page or, if such a rate cannot be determined at such time, the rate prevailing as at 12 noon (London time) on the immediately preceding day on which such rate can be so determined or, if such rate cannot be so determined by reference to the Reference Page, the rate determined in such other manner as an Independent Financial Adviser in good faith shall prescribe.

“**Principal Paying Agent**” means any Person (which may include the Company) authorized by the Company to pay the Liquidation Preference of, or Distributions on, or any Additional Amounts with respect to, the contingent convertible capital securities of any series on behalf of the Company. Except as otherwise specified as contemplated by Section 3.01 hereof, The Bank of New York Mellon, acting through its London Branch will act as Principal Paying Agent in respect of the Contingent Convertible Capital Securities of any series.

“**Qualifying Notes**” means, with respect to each series of contingent convertible capital securities, at any time, any securities issued directly by the Company that have terms not otherwise materially less favorable to the holders of the Contingent Convertible Capital Securities of such series than the terms of the Contingent Convertible Capital Securities of such series, provided that the Company shall have delivered a certificate signed by two directors of the Company to that effect to the Trustee not less than five Business Days prior to (x) in the case of a substitution of the Contingent Convertible



Capital Securities of any series pursuant to Section 9.04, the issue date of the relevant securities or (y) in the case of a variation of the Contingent Convertible Capital Securities of any series pursuant to Section 9.04, the date such variation becomes effective, provided that such securities shall:

and (i) contain terms which comply with the then current requirements for their inclusion in the Tier 1 Capital of the Company;

(ii) carry the same rate of interest as the Contingent Convertible Capital Securities of such series prior to the relevant substitution or variation pursuant to Section 9.04; and

(iii) have the same denomination and aggregate outstanding principal amount as the Contingent Convertible Capital Securities prior to the relevant substitution or variation pursuant to Section 9.04; and

(iv) have the same date of maturity, if applicable, and the same dates for payment of interest as the Contingent Convertible Capital Securities prior to the relevant substitution or variation pursuant to Section 9.04; and

(v) have at least the same ranking as the Contingent Convertible Capital Securities; and

(vi) not, immediately following such substitution or variation, be subject to a Capital Event and/or a Tax Event; and

(vii) be listed or admitted to trading on any stock exchange as selected by the Company, if the Contingent Convertible Capital Securities were listed or admitted to trading on a stock exchange immediately prior to the relevant substitution or variation pursuant to Section 9.04.

“**Recognized Stock Exchange**” means a regulated regularly operating, recognized stock exchange or securities market in an OECD member state.

“**Redemption Date**”, when used with respect to any Contingent Convertible Capital Security to be redeemed, means the date fixed for such redemption by or pursuant to this Contingent Convertible Capital Securities Indenture.

“**Redemption Price**” means, per Contingent Convertible Capital Security, the Liquidation Preference plus, if applicable, where not cancelled pursuant to, or otherwise subject to the limitations on payment set out in Section 3.08 and Section 3.09, an amount equal to accrued and unpaid Distributions for the then current Distribution Period to (but excluding) the date fixed for redemption of the Contingent Convertible Capital Securities of the relevant series.

“**Regular Record Date**” for the Distribution payable on any Distribution Date on registered Contingent Convertible Capital Securities of any series means the date specified for the purpose pursuant to Section 3.01.



“**regulated entity**” means any entity to which Law 11/2015 applies as provided under article 1.2 of Law 11/2015, as amended from time to time, which includes, certain credit institutions, investment firms, and certain of their parent or holding companies;

“**Regulator**” means the European Central Bank, the Bank of Spain or such other or successor authority exercising primary bank supervisory authority, in each case with respect to prudential matters in relation to the Company and/or the Group from time to time;

“**Reference Page**” means the relevant page on Bloomberg or Reuters or such other information service provider that displays the relevant information.

“**Relevant Resolution Authority**” means the Spanish Fund for the Orderly Restructuring of Banks or the European Single Resolution Mechanism, as the case may be, according to Law 11/2015, and any other entity with the authority to exercise the Bail-in Power or any other resolution power from time to time.

“**Relevant Stock Exchange**” means the Spanish Stock Exchanges or if at the relevant time the Common Shares are not at that time listed and admitted to trading on the Spanish Stock Exchanges, the principal stock exchange or securities market on which the Common Shares are then listed, admitted to trading or quoted or accepted for dealing.

“**Responsible Officer**”, when used with respect to the Trustee, means any officer of the Trustee assigned to or working in the Corporate Trust Administration unit (or any successor unit) of the Trustee located at the Corporate Trust Office of the Trustee, who shall have direct responsibility for the administration of this Contingent Convertible Capital Securities Indenture and, for the purposes of Section 7.01(c)(ii), shall also include any other officer of the Trustee to whom any corporate trust matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“**Risk Weighted Assets Amount**” means at any time, with respect to the Company or the Group, as the case may be, the aggregate amount (in the Accounting Currency) of the risk weighted assets of the Company or the Group, respectively, calculated in accordance with Applicable Banking Regulations at such time.

“**Scheme of Arrangement**” has the meaning given in the definition of “Newco Scheme”.

“**Securities**” means any securities including, without limitation, shares in the capital of the Company, or options, warrants or other rights to subscribe for or purchase or acquire shares in the capital of the Company.

“**Securities Act**” means the United States Securities Act of 1933, as amended.

“**Selling Agent**” shall have the meaning set forth in Section 4.07.

“**Settlement Shares Depository**” means a reputable independent financial institution, trust company or similar entity to be appointed by the Company on or prior to



200FX&=8eN33z@fLK

any date when a function ascribed to the Settlement Shares Depository is required to be performed to perform such functions and who will hold Common Shares in Iberclear or any of its participating entities in a designated trust or custody account for the benefit of the holders of the Contingent Convertible Capital Securities of any series and otherwise on terms consistent with the terms of the Contingent Convertible Capital Securities and this Contingent Convertible Capital Securities Indenture.

“**Share Currency**” means euro or such other currency in which the Common 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 Common Shares.

“**Spanish Companies Act**” means the consolidated text of the Spanish Companies Act (*Ley de Sociedades de Capital*), as amended, approved by the Royal Decree Legislative 1/2010, of 2 July 2010.

“**Spanish Insolvency Law**” means Law 22/2003 (*Ley Concursal*) of 9 July 2003 regulating insolvency proceedings in Spain, or an equivalent legal provision which replaces it in the future.

“**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 (SIBE)*).

“**Specified Date**” has the meanings given in clauses Section 4.03(a)(iv), Section 4.03(a)(vi), Section 4.03(a)(vii), Section 4.03(a)(viii) of Section 4.03, as applicable.

“**Spin-Off**” means:

(a) a distribution of Spin-Off Securities by the Company to 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 Company) 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 Company or any member of the Group.

“**Spin-Off Securities**” means equity share capital of an entity other than the Company or options, warrants or other rights to subscribe for or purchase equity share capital of an entity other than the Company.

“**SRM Regulation**” means Regulation (EU) No. 806/2014 of the European Parliament and of 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 superseded from time to time.



“**Subsidiary**” means any entity over which the Company may have, directly or indirectly, control in accordance with Applicable Banking Regulations;

“**Tax Event**” in respect of any series of Contingent Convertible Capital Securities, means that as a result of any change in the laws or regulations of Spain or in either case of any political subdivision thereof or any authority or agency therein or thereof having power to tax or in the interpretation or administration of any such laws or regulations which becomes effective on or after the date of issue of the contingent convertible capital securities of such series the Company shall determine that (a) the Company would not be 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 Company would be materially reduced, or (b) the Company would be required to pay Additional Amounts pursuant to Section 11.04, or (c) the applicable tax treatment of the Contingent Convertible Capital Securities of such series changes in a material way that was not reasonably foreseeable at the issue date.

“**Tier 1 Capital**” means at any time, with respect to the Company or the Group, as the case may be, the Tier 1 capital of the Company or the Group, respectively, as calculated by the Company in accordance with Chapters 1, 2 and 3 (Tier 1 Capital, Common Equity Tier 1 Capital and Additional Tier 1 capital) of Title I (Elements of own funds) of Part Two (Own Funds) of the CRR and/or Applicable Banking Regulations at such time, including any applicable transitional, phasing in or similar provisions.

“**Tier 2 Capital**” means at any time, with respect to the Company or the Group, as the case may be, the Tier 2 capital of the Company or the Group, respectively, as calculated by the Company in accordance with Chapter 4 (Tier 2 capital) of Title I (Elements of own funds) of Part Two (Own Funds) of the CRR and/or Applicable Banking Regulations at such time, including any applicable transitional, phasing in or similar provisions.

“**Trigger Conversion**” has the meaning given in Section 4.01.

“**Trigger Event**” means if, at any time, the CET1 ratio of the Company or the Group calculated in accordance with Applicable Banking Regulations is less than 5.125 percent, as determined by the Company or the Regulator.

“**Trigger Event Notice**” shall have the meaning given in Section 4.04.

“**Trigger Event Notice Date**” means the date on which a Trigger Event Notice is given.

“**Trustee**” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor trustee shall have become such pursuant to the applicable provisions of this Contingent Convertible Capital Securities Indenture, and thereafter “Trustee” shall mean the Person who is then the Trustee hereunder, or, if a different



Trustee is appointed for a particular series of Contingent Convertible Capital Securities, the Trustee named in the relevant indenture supplemental hereto as the Trustee for that particular series of Contingent Convertible Capital Securities and if at any time there is more than one such Person, "Trustee" shall mean and include each such Person; and "Trustee" as used with respect to the Contingent Convertible Capital Securities of any series shall mean the Trustee with respect to the Contingent Convertible Capital Securities of such series.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended, as in effect at the date as of which this instrument was executed, except as provided in Section 10.05.

"**United States**" and "**U.S.**" mean the United States of America and, except in the case of Sections 7.10 and 7.15, its territories and possessions.

"**U.S.\$**" and "**U.S. dollars**" means the lawful currency of the United States of America.

"**U.S. Government Securities Business Day**" means any day except for a Saturday, Sunday or a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for the purposes of trading in U.S. government securities.

"**Volume Weighted Average Price**" means, in respect of a Common Share, Security or, as the case may be, a Spin-Off Security on any dealing day, the order book volume-weighted average price of a Common Share, Security or, as the case may be, a Spin-Off Security published by or derived (in the case of a Common Share) from the Reference Page or (in the case of a Security (other than Common Shares) or Spin-Off Security) from the principal stock exchange or securities market on which such Securities or Spin-Off Securities are then listed or quoted or dealt in, if any or, in any such case, such other source 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 a Common 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.

"**Voting Rights**" means the right generally to vote at a general meeting of Shareholders of the Company (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 happening of any contingency).

Section 1.02. *Compliance Certificates and Opinions.* Unless otherwise expressly provided for in this Contingent Convertible Capital Securities Indenture, upon any application or request by the Company to the Trustee to take any action under any



200FX&=8eN341dxLv

provision of this Contingent Convertible Capital Securities Indenture, the Company shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent, if any, provided for in this Contingent Convertible Capital Securities Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of the legal advisor rendering such opinion all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Contingent Convertible Capital Securities Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Contingent Convertible Capital Securities Indenture (other than Section 11.06) shall include:

(a) a statement that each Person signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of each such Person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such Person, such condition or covenant has been complied with.

Section 1.03. *Form of Documents Delivered to Trustee.* In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, legal advisors, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion or representations are based are erroneous. Any such certificate or opinion of, or representations by, legal advisors may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such legal advisors know, or in the exercise of reasonable care should know, that the certificate or opinion or representation with respect to such matters is erroneous.





Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Contingent Convertible Capital Securities Indenture, they may, but need not, be consolidated and form one instrument.

Section 1.04. *Acts of Holders.*

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Contingent Convertible Capital Securities Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, when it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Contingent Convertible Capital Securities Indenture and (subject to Section 7.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. When such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Contingent Convertible Capital Securities shall be proved by the Contingent Convertible Capital Security Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Contingent Convertible Capital Security shall bind every future Holder of the same Contingent Convertible Capital Security and the Holder of every Contingent Convertible Capital Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee, any Contingent Convertible Capital Security Registrar, any Paying Agent, any Authenticating Agent or the Company in reliance thereon, whether or not notation of such action is made upon such Contingent Convertible Capital Security or such other Contingent Convertible Capital Security.

(e) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a Board Resolution or an Officer’s Certificate, fix in advance a



record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Outstanding Contingent Convertible Capital Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Contingent Convertible Capital Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Contingent Convertible Capital Securities Indenture not later than six months after the record date.

Section 1.05. *Notices, Etc. to Trustee and Company.* Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Contingent Convertible Capital Securities Indenture to be made upon, given or furnished to, or filed with,

(a) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if made, given, furnished or filed in writing (which may be via facsimile or email delivery of a copy of such document) to the Trustee at its Corporate Trust Office, and the Trustee agrees to accept and act upon facsimile transmission or email delivery of written instructions pursuant to this Contingent Convertible Capital Securities Indenture, provided, however, that (x) the party providing such written instructions, subsequent to such transmission of written instructions, shall provide the originally executed instructions or directions to the Trustee in a timely manner, and (y) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions; or

(b) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class air mail postage prepaid, to the Company, to the address of its principal office specified in the first paragraph of this Contingent Convertible Capital Securities Indenture or at any other another address previously furnished in writing to the Trustee by the Company.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Contingent Convertible Capital Securities Indenture sent by unsecured e-mail, portable document format (PDF), facsimile transmission or other similar unsecured electronic methods, provided, however, that the Trustee shall have received from the Company an incumbency certificate listing persons designated to give such instructions or directions and containing the titles and specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing, and provided further that the Trustee shall have no obligation or responsibility to confirm or verify that the instruction or direction was in



fact sent by, or on behalf of, a person so designated to give instructions or directions. If the Company elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding a conflict or inconsistency between such instructions and a subsequent written instruction. The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk or interception and misuse by third parties.

Section 1.06. *Notice to Holders; Waiver.* When this Contingent Convertible Capital Securities Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided), if given in writing and mailed, first-class postage prepaid, to each Holder of a Contingent Convertible Capital Security affected by such event in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act with respect to reports pursuant to Section 8.03(a).

For so long as the Contingent Convertible Capital Securities of any series are represented by Global Securities, the Company will deliver a copy of all notices with respect to such series to the Holder (if the address of such Holder is known to the Company).

When notice to Holders of Contingent Convertible Capital Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Contingent Convertible Capital Securities Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 1.07. *Language of Notices, Etc.* Any notice under this Contingent Convertible Capital Securities Indenture shall be in the English language, except that, if the Company so elects, any published notice may be in an official language of the country of publication.

Section 1.08. *Conflict with Trust Indenture Act.* If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this Contingent Convertible Capital Securities Indenture by any of the provisions of the Trust Indenture Act, such required provision of the Trust Indenture Act shall control. If at any future time any provision required to be included herein by the Trust Indenture Act



as in force at the date as of which this Contingent Convertible Capital Securities Indenture was executed or any limitation imposed by the Trust Indenture Act at such date on any provision otherwise included herein would not be so required or imposed (in whole or in part) if this Contingent Convertible Capital Securities Indenture were executed at such future time, the Company and the Trustee may enter into one or more indentures supplemental hereto pursuant to Section 10.01 to change or eliminate (in whole or in part) such provision or limitation of this Contingent Convertible Capital Securities Indenture in conformity with the requirements of the Trust Indenture Act as then in force, except that (subject to Article 10) no provision or limitation required to be included herein by Sections 310(a)(1) and (a)(2), 315(a), (c), (d)(1), (d)(2), (d)(3) and (e), 316(a)(1)(A), (a)(1)(B), (a)(2), (a) (last sentence) and (b) of the Trust Indenture Act as in force at the date as of which this Contingent Convertible Capital Securities Indenture was executed may be so changed or eliminated.

Section 1.09. *Effect of Headings and Table of Contents.* The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.10. *Successors and Assigns.* All covenants and agreements in this Contingent Convertible Capital Securities Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

Section 1.11. *Separability Clause.* In case any provision in this Contingent Convertible Capital Securities Indenture or in the Contingent Convertible Capital Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.12. *Benefits of Contingent Convertible Capital Securities Indenture.* Nothing in this Contingent Convertible Capital Securities Indenture or in the Contingent Convertible Capital Securities, express or implied, shall give to any Person, other than the parties hereto and any Contingent Convertible Capital Securities Registrars or Paying Agent or Calculation Agent with respect to any Contingent Convertible Capital Securities and their successors hereunder, and the Holders of Contingent Convertible Capital Securities, any benefit or any legal or equitable right, remedy or claim under this Contingent Convertible Capital Securities Indenture.

Section 1.13. *Governing Law.* This Contingent Convertible Capital Securities Indenture and the Contingent Convertible Capital Securities shall be governed by and construed in accordance with the laws of the State of New York, except for Section 13.01, which shall be governed by and construed in accordance with the laws of the Kingdom of Spain, and except that the authorization and execution of this Contingent Convertible Capital Securities Indenture, the Contingent Convertible Capital Securities shall be governed by (in addition to the laws of the State of New York relevant to execution) the respective jurisdictions of organization of the Company and the Trustee, as the case may be.



200FX&=8eN3Wfys3

Section 1.14. *Business Days and Legal Holidays.* The terms of the Contingent Convertible Capital Securities shall provide that, in any case where any Distribution Date or Redemption Date of a Contingent Convertible Capital Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Contingent Convertible Capital Securities Indenture or the Contingent Convertible Capital Securities other than a provision in the Contingent Convertible Capital Securities that specifically states that such provision shall apply in lieu of this Section) payments of Distributions, if any, (and premium, if any) or Liquidation Preference and the exchange of the Contingent Convertible Capital Security need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment (or such other Business Day as shall be provided in such Contingent Convertible Capital Security) with the same force and effect as if made on such Distribution Date or Redemption Date, provided that no Distribution shall accrue for the period from and after such Distribution Date or Redemption Date, as the case may be.

Section 1.15. *Appointment of Agent for Service.* The Company has designated and appointed Banco Santander, S.A., New York Branch, 45 E. 53<sup>rd</sup> Street, New York, New York 10022, as its authorized agent (the "Authorized Agent"), as its authorized agent upon which process may be served in any suit or proceeding in any Federal or State court in the Borough of Manhattan, The City of New York arising out of or relating to the Contingent Convertible Capital Securities or this Contingent Convertible Capital Securities Indenture, but for that purpose only, and agrees that service of process upon said Authorized Agent shall be deemed in every respect effective service of process upon it in any such suit or proceeding in any Federal or State court in the Borough of Manhattan, The City of New York, New York. Such appointment shall be irrevocable so long as any of the Contingent Convertible Capital Securities remain Outstanding until the appointment of a successor by the Company and such successor's acceptance of such appointment. Upon such acceptance, the Company shall notify the Trustee of the name and address of such successor. The Company further agrees to take any and all action, including the execution and filing of any and all such documents and instruments, as may be necessary to continue such designation and appointment of said Authorized Agent in full force and effect so long as any of the Contingent Convertible Capital Securities shall be Outstanding. The Trustee shall not be obligated and shall have no responsibility with respect to any failure by the Company to take any such action. The Company hereby irrevocably submits (for the purposes of any such suit or proceeding) to the non-exclusive jurisdiction of any such court in which any such suit or proceeding is so instituted, and waives, to the extent it may effectively do so, any right to trial by jury and any objection it may have now or hereafter to the laying of the venue of any such suit or proceeding. To the extent that the Company may be entitled, in any jurisdiction in which judicial proceedings may at any time be commenced with respect to or arising out of this Contingent Convertible Capital Securities Indenture to claim for itself or its revenues, assets or properties immunity (whether by reason of sovereign immunity or otherwise) from suit, from the jurisdiction of any court (including, but not limited to, any court of the United States of America or the State of New York) or from any legal process with respect to itself or its property, from attachment prior to judgment, from set-off, from execution of a judgment, from the grant of injunctive relief, whether prior to or after judgment, or from any other legal process (including, without limitation, in relation to



200FX&=8eN3WHSisG

enforcement of any arbitration award), and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), the Company hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity and consents to the grant of any such relief.

Section 1.16. *Calculation Agent.* If the Company appoints a Calculation Agent pursuant to Section 3.01 with respect to any series of Contingent Convertible Capital Securities, any determination of the Distribution Rate on, or other amounts in relation to, such series of Contingent Convertible Capital Securities in accordance with the terms of such series of Contingent Convertible Capital Securities by such Calculation Agent shall (in the absence of manifest error, bad faith or willful misconduct) be binding on the Company, the Trustee and all Holders and (in the absence of manifest error, bad faith or willful misconduct) no liability to the Holders shall attach to the Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions.

Section 1.17. *Waiver of Jury Trial.* EACH OF THE PARTIES HERETO, AND EACH HOLDER OF A CONTINGENT CONVERTIBLE CAPITAL SECURITY BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS CONTINGENT CONVERTIBLE CAPITAL SECURITIES INDENTURE, THE CONTINGENT CONVERTIBLE CAPITAL SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 1.18. *Judgment Currency.* Any payment on account of an amount that is payable in U.S. dollars (the “Required Currency”) which is made to or for the account of any Holder or the Trustee in lawful currency of any other jurisdiction (the “Judgment Currency”), whether as a result of any judgment or order or the enforcement thereof or the liquidation of the Company shall constitute a discharge of the Company obligation under this Contingent Convertible Capital Securities Indenture and the Contingent Convertible Capital Securities only to the extent of the amount of the Required Currency such Holder or the Trustee, as the case may be, could purchase in the London foreign exchange markets with the amount of the Judgment Currency in accordance with normal banking procedures at the rate of exchange prevailing on the first Business Day following receipt of the payment in the Judgment Currency. If the amount of the Required Currency that could be so purchased is less than the amount of the Required Currency originally due to such Holder or the Trustee, as the case may be, the Company shall indemnify and hold harmless the Holder or the Trustee, as the case may be, from and against all loss or damage arising out of, or as a result of, such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Contingent Convertible Capital Securities Indenture or the Contingent Convertible Capital Securities, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by any Holder or the Trustee from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due hereunder or under any judgment or order.



ARTICLE 2  
CONTINGENT CONVERTIBLE CAPITAL SECURITY FORMS

Section 2.01. *Forms Generally.* The Contingent Convertible Capital Securities of each series shall be issuable in registered form and in such forms as shall be established by or pursuant to a Board Resolution, an Officer’s Certificate, or in one or more indentures supplemental hereto, pursuant to Section 3.01, in each case with such insertions, omissions, substitutions and other variations as are required or permitted by this Contingent Convertible Capital Securities Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with any applicable law or rule or regulation made pursuant thereto or with the rules of any securities exchange or Depositary therefor, or as may, consistently herewith, be determined by the officers executing such Contingent Convertible Capital Securities, all as evidenced by any such execution.

Section 2.02. *Form of Trustee’s Certificate of Authentication.* The Trustee’s certificate of authentication shall be in substantially the following form:

CERTIFICATE OF AUTHENTICATION

This is one of the Contingent Convertible Capital Securities of the series designated herein referred to in the within-mentioned Contingent Convertible Capital Securities Indenture.

Dated: \_\_\_\_\_

THE BANK OF NEW YORK MELLON, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

ARTICLE 3  
THE CONTINGENT CONVERTIBLE CAPITAL SECURITIES

Section 3.01. *Amount Unlimited; Issuable in Series.* The aggregate Liquidation Preference of Contingent Convertible Capital Securities which may be authenticated and delivered under this Contingent Convertible Capital Securities Indenture is unlimited. The Contingent Convertible Capital Securities may be issued in one or more series.

There shall be established by or pursuant to a Board Resolution of the Company, or established by an Officer’s Certificate, or established in one or more indentures supplemental hereto, prior to the initial issuance of Contingent Convertible Capital Securities of any series,

(a) the title of the Contingent Convertible Capital Securities of the series (which shall distinguish the Contingent Convertible Capital Securities of the series from all other Contingent Convertible Capital Securities);



(b) any limit upon the aggregate Liquidation Preference of the Contingent Convertible Capital Securities of the series which may be authenticated and delivered under this Contingent Convertible Capital Securities Indenture (except for Contingent Convertible Capital Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Contingent Convertible Capital Securities of the series pursuant to Section 3.04, 3.05, 3.06, 10.06 or 12.07) and except for any Contingent Convertible Capital Securities which, pursuant to Section 3.03 are deemed never to have been authenticated and delivered hereunder);

(c) the date or dates, if any, on which the Liquidation Preference of the Contingent Convertible Capital Securities of the series is payable;

(d) the rate or rates, if any, at which Distributions on the Contingent Convertible Capital Securities of the series shall accrue or the manner of calculation of such rate or rates, if any, the date or dates from which such Distributions shall accrue, the Distribution Dates on which such Distributions shall be payable or the manner of determination of such Distribution Dates and the Regular Record Date for the Distributions payable on any Distribution Date and any dates required to be established pursuant to Section 8.01;

(e) whether any premium, upon redemption or otherwise, shall be payable by the Company on Contingent Convertible Capital Securities of the series, and whether such premium shall be redeemable at the option of the Company or the Holder;

(f) the place or places where the Liquidation Preference of (and premium, if any) and any Distributions on Contingent Convertible Capital Securities of the series shall be payable, and the paying agent, if other than the Principal Paying Agent, who shall be authorized to pay Liquidation Preference of (and premium, if any) and any Distributions on Contingent Convertible Capital Securities of such series, at least one such paying agent having an office or agency in the Borough of Manhattan, The City of New York;

(g) other than with respect to any redemption of the Contingent Convertible Capital Securities pursuant to Section 12.08, whether or not such series of Contingent Convertible Capital Securities are to be redeemable, in whole or in part, at the Company's option and, if so redeemable, the period or periods within which, the price or prices at which and the terms and conditions upon which, Contingent Convertible Capital Securities of the series may be redeemed, including the date referred to in Section 12.08;

(h) the obligation, if any, of the Company to redeem or purchase Contingent Convertible Capital Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which, and the terms and conditions upon which Contingent Convertible Capital Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;





- (i) the denominations in which Contingent Convertible Capital Securities of the series in each applicable form shall be issuable and any provisions relating to redenomination of any Contingent Convertible Capital Securities;
- (j) if Additional Amounts, pursuant to Section 11.04, will not be payable;
- (k) if other than Dollars, provisions, if any, for the Contingent Convertible Capital Securities of the series to be denominated, and payments thereon to be made, in Foreign Currencies and specifying the Place of Payment and the manner of payment thereon and any other terms with respect thereto;
- (l) if other than the coin or currency in which the Contingent Convertible Capital Securities of that series are denominated, the coin or currency in which payment of the Liquidation Preference of and premium and Distributions on the Contingent Convertible Capital Securities of such series shall be payable;
- (m) if the Liquidation Preference of and Distributions on the Contingent Convertible Capital Securities of such series are to be payable, at the election of the Company or a Holder thereof, in a coin or currency other than that in which the Contingent Convertible Capital Securities are denominated, the period or periods within which, and the terms and conditions upon which, such election may be made;
- (n) whether the Contingent Convertible Capital Securities of the series shall be issued in whole or in part in the form of one or more Global Securities and the initial Holder with respect to such Global Security or Contingent Convertible Capital Securities;
- (o) if the Contingent Convertible Capital Securities of such series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Contingent Convertible Capital Security of such series or otherwise) only upon receipt of certain certificates or other documents or satisfaction of other conditions, then the form and terms of such certificates, documents or conditions;
- (p) if the amounts of payments of Liquidation Preference or Distributions on the Contingent Convertible Capital Securities of the series may be determined with reference to an index or are otherwise not fixed on the original issue date thereof, the manner in which such amounts shall be determined and the Calculation Agent, if any, who shall be appointed and authorized to calculate such amounts;
- (q) the forms of Contingent Convertible Capital Securities of the series appertaining thereto;
- (r) any other terms of the series (which terms shall not be inconsistent with the provisions of this Contingent Convertible Capital Securities Indenture); and
- (s) the Trustee for such series of Contingent Convertible Capital Securities who shall also be named in an indenture supplemental hereto for a particular series of Contingent Convertible Capital Securities if the Trustee for such series is not the Trustee named in the first paragraph of this Contingent Convertible Capital Securities Indenture.



All Contingent Convertible Capital Securities of any one series shall be substantially identical except as to denomination except as may otherwise be provided in or pursuant to such action or in any such Officer's Certificate or indenture supplemental hereto.

If the forms of Contingent Convertible Capital Securities of any series, or any of the terms thereof, are established by action taken pursuant to a Board Resolution of the Company, a copy of the Board Resolution in respect thereof shall be delivered to the Trustee at or prior to the delivery of the Company Order pursuant to Section 3.03 for the authentication and delivery of such Contingent Convertible Capital Securities.

Section 3.02. *Denominations.* The Contingent Convertible Capital Securities of each series shall be issuable in such denominations as shall be specified as contemplated by Section 3.01.

Section 3.03. *Execution, Authentication, Delivery and Dating.* The Contingent Convertible Capital Securities shall be executed on behalf of the Company by any one of the representatives of the Company authorized to do so by Board Resolution or by any member of the Board of Directors. The signature of any of these authorized representatives on the Contingent Convertible Capital Securities may be manual or facsimile. Contingent Convertible Capital Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officer of the Company shall bind the Company, notwithstanding that such individual has ceased to hold such office prior to the authentication and delivery of such Contingent Convertible Capital Securities.

At any time and from time to time after the execution and delivery of this Contingent Convertible Capital Securities Indenture, the Company may deliver Contingent Convertible Capital Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Contingent Convertible Capital Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Contingent Convertible Capital Securities. In authenticating such Contingent Convertible Capital Securities and accepting the additional responsibilities under this Contingent Convertible Capital Securities Indenture in relation to such Contingent Convertible Capital Securities the Trustee shall be entitled to receive, and (subject to Section 7.01) shall be fully protected in relying upon, an Opinion of Counsel and an Officer's Certificate stating that the form and terms thereof have been established in conformity with the provisions of this Contingent Convertible Capital Securities Indenture.

The Trustee shall not be required to authenticate such Contingent Convertible Capital Securities if the issue of such Contingent Convertible Capital Securities pursuant to this Contingent Convertible Capital Securities Indenture will affect the Trustee's own



rights, duties or immunities under the Contingent Convertible Capital Securities and this Contingent Convertible Capital Securities Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Each Contingent Convertible Capital Security shall be dated the date of its authentication.

No Contingent Convertible Capital Security shall be entitled to any benefit under this Contingent Convertible Capital Securities Indenture or be valid or obligatory for any purpose unless there appears on such Contingent Convertible Capital Security a certificate of authentication substantially in the form provided for herein executed by or on behalf of the Trustee by manual signature, and such certificate upon any Contingent Convertible Capital Security shall be conclusive evidence, and the only evidence, that such Contingent Convertible Capital Security has been duly authenticated and delivered hereunder and that such Contingent Convertible Capital Security is entitled to the benefits of this Contingent Convertible Capital Securities Indenture. Notwithstanding the foregoing, if any Contingent Convertible Capital Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Contingent Convertible Capital Security to the Trustee for cancellation as provided in Section 3.13, for all purposes of this Contingent Convertible Capital Securities Indenture, such Contingent Convertible Capital Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefit of this Contingent Convertible Capital Securities Indenture.

Section 3.04. *Temporary Contingent Convertible Capital Securities.* Pending the preparation of definitive Contingent Convertible Capital Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Contingent Convertible Capital Securities substantially of the tenor of the definitive Contingent Convertible Capital Securities in lieu of which they are issued, which Contingent Convertible Capital Securities may be printed, lithographed, typewritten, photocopied or otherwise produced. Temporary Contingent Convertible Capital Securities may be issued as registered Contingent Convertible Capital Securities in any authorized denomination, and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Contingent Convertible Capital Securities may determine, all as evidenced by such execution.

If temporary Contingent Convertible Capital Securities of any series are issued, the Company will cause, if so required by the terms of such temporary Contingent Convertible Capital Securities, definitive Contingent Convertible Capital Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Contingent Convertible Capital Securities of such series, the temporary Contingent Convertible Capital Securities of such series shall be exchangeable for definitive Contingent Convertible Capital Securities of such series containing identical terms and provisions upon surrender of the temporary Contingent Convertible Capital Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Contingent Convertible Capital Securities of any series the Company shall



200FX&=8eN34oeoLR

execute, and the Trustee shall authenticate and deliver in exchange therefor, a like aggregate Liquidation Preference of definitive Contingent Convertible Capital Securities of the same series of authorized denominations containing identical terms and provisions. Until so exchanged, unless otherwise provided therein or in a supplemental indenture relating thereto, the temporary Contingent Convertible Capital Securities of any series shall in all respects be entitled to the same benefits (but shall be subject to all the limitations of rights) under this Contingent Convertible Capital Securities Indenture as definitive Contingent Convertible Capital Securities of such series.

*Section 3.05. Registration, Registration of Transfer and Exchange.*

(a) Global Securities. This Section 3.05(a) shall apply to Global Securities unless otherwise specified, as contemplated by Section 3.01.

Except as otherwise specified as contemplated by Section 3.01 hereof, the Contingent Convertible Capital Securities shall be initially issued and represented by one or more Global Securities in registered form, which shall be authenticated as contemplated by this Contingent Convertible Capital Securities Indenture.

Each Global Security authenticated under this Contingent Convertible Capital Securities Indenture shall be registered in the name of the Depository designated for such Global Security or a nominee thereof and delivered to such Depository or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Contingent Convertible Capital Security for all purposes of this Contingent Convertible Capital Securities Indenture. Except as otherwise specified as contemplated by Section 3.01 hereof, each Global Security authenticated under this Contingent Convertible Capital Securities Indenture shall be initially registered in the name of DTC or its nominee only.

Unless the Global Security is presented by an authorized representative of the Holder to the Company or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of a nominee of the Holder and any payment is made to such nominee, any transfer, pledge or other use of the Global Security for value or otherwise shall be wrongful since the registered owner of such Global Security, the nominee of the Holder, has an interest in such Global Security.

Except as otherwise specified as contemplated by Section 3.01 hereof, any Global Security shall be exchangeable for definitive Contingent Convertible Capital Securities only as provided in this paragraph. A Global Security shall be exchangeable pursuant to this Section only (i) if the relevant Depository notifies the Company that it is unwilling or unable to continue to act as Depository and a successor depository is not appointed by the Company within 120 days of such notification, (ii) if, in the event of a winding-up of the Company, the Company fails to make a payment on the Contingent Convertible Capital Securities when due or (iii) at any time if the Company at its option and in its sole discretion determines that the Global Securities of a particular series should be exchanged for definitive Contingent Convertible Capital Securities of that series. Any Global Security that is exchangeable pursuant to the preceding sentence shall be exchangeable



for, unless otherwise specified or contemplated by Section 3.01, definitive Contingent Convertible Capital Securities bearing Distributions (if any) at the same rate or pursuant to the same formula, having the same date of issuance, the same date or dates from which such Distributions shall accrue, the same Distribution Dates or manner of determination of such Distribution Dates, redemption provisions, if any, specified currency and other terms and of differing denominations aggregating a like amount as the Global Security so exchangeable. Definitive Contingent Convertible Capital Securities shall be registered in the names of the owners of the beneficial interests in such Global Securities as such names are from time to time provided by the Holder to the Trustee.

Any Global Security that is exchangeable pursuant to the preceding paragraph, unless otherwise specified as contemplated by Section 3.01, shall be exchangeable for Contingent Convertible Capital Securities issuable in authorized denominations of a like aggregate Liquidation Preference and tenor.

No Global Security may be transferred except as a whole by the Holder to a nominee of the Holder or by the Holder or any such nominee to a successor of the Holder or a nominee of such successor. Except as provided above, owners solely of beneficial interests in a Global Security shall not be entitled to receive physical delivery of Contingent Convertible Capital Securities in definitive form and will not be considered the holders thereof for any purpose under this Contingent Convertible Capital Securities Indenture.

In the event that a Global Security is surrendered for redemption in part pursuant to Section 12.07, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Global Security, without service charge, a new Global Security in a denomination equal to and in exchange for the unredeemed portion of the Liquidation Preference of the Global Security so surrendered.

The Agent Members and any beneficial owners shall have no rights under this Contingent Convertible Capital Securities Indenture with respect to any Global Security held on their behalf by a Holder, and such Holder may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee, or any agent of the Company or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by a Holder or impair, as between any such Holder or other clearance service and its Agent Members and Holders the operation of customary practices governing the exercise of the rights of a holder of any security, including without limitation the granting of proxies or other authorization of participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under this Contingent Convertible Capital Securities Indenture.

In connection with any exchange of interests in a Global Security for definitive Contingent Convertible Capital Securities of another authorized form, as provided in this Section 3.05(a), then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Company shall deliver to the



Trustee definitive Contingent Convertible Capital Securities in aggregate Liquidation Preference equal to the Liquidation Preference of such Global Security or the portion to be exchanged, executed by the Company. On or after the earliest date on which such interests may be so exchanged, such Global Security shall be surrendered by the Holder to the Trustee, as the Company's agent for such purpose, to be exchanged, in whole or from time to time in part, for definitive Contingent Convertible Capital Securities without charge (in which case the Company or Trustee may require payment of any taxes or governmental charges arising) and the Trustee shall authenticate and deliver, in exchange for each portion of such Global Security, an equal aggregate Liquidation Preference of definitive Contingent Convertible Capital Securities of authorized denominations as the portion of such Global Security to be exchanged. Any Global Security that is exchangeable pursuant to this Section 3.05 shall be exchangeable for Contingent Convertible Capital Securities issuable in the denominations specified as contemplated by Section 3.01 and registered in such names as the Holder of such Global Security shall direct. If a definitive Contingent Convertible Capital Security is issued in exchange for any portion of a Global Security after the close of business at the office or agency where such exchange occurs on any record date and before the opening of business at such office or agency on the relevant Distribution Date, Distributions will not be payable on such Distribution Date in respect of such definitive Contingent Convertible Capital Security, but will be payable on such Distribution Date only to the Person to whom Distributions in respect of such portion of such Global Security are payable.

A Depository may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a holder is entitled to take under this Contingent Convertible Capital Securities Indenture with respect to the Contingent Convertible Capital Securities.

(b) Except as otherwise specified pursuant to Section 3.01, Contingent Convertible Capital Securities of any series may only be exchanged for a like aggregate Liquidation Preference of Contingent Convertible Capital Securities of such series of other authorized denominations containing identical terms and provisions. Contingent Convertible Capital Securities to be exchanged shall be surrendered at an office or agency of the Company designated pursuant to Section 11.02 for such purpose, and the Company shall execute, and the Trustee shall authenticate and deliver, in exchange therefor the Contingent Convertible Capital Security or Contingent Convertible Capital Securities of the same series which the Holder making the exchange shall be entitled to receive.

Except as otherwise specified pursuant to Section 3.01, the Company shall cause to be kept in the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency of the Company in a Place of Payment being herein sometimes collectively referred to as the "**Contingent Convertible Capital Security Register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Contingent Convertible Capital Securities and of transfers of such Contingent Convertible Capital Securities. Except as otherwise specified pursuant to Section 3.01, the Trustee is hereby appointed "**Contingent Convertible Capital Security Registrar**" for the purpose of registering Contingent Convertible Capital Securities and transfers of Contingent Convertible Capital Securities as herein provided.



200FX&=&eN34%g7L;

Contingent Convertible Capital Securities shall be transferable only on the Contingent Convertible Capital Security Register. Upon surrender for registration of transfer of any Contingent Convertible Capital Security of any series, together with the form of transfer endorsed on it, duly completed and executed at an office or agency of the Company designated pursuant to Section 11.02 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver to the address specified in the form of transfer, within three Business Days, in the name of the designated transferee or transferees, one or more new Contingent Convertible Capital Securities of the same series of any authorized denominations containing identical terms and provisions, of a like aggregate Liquidation Preference. If only part of a Contingent Convertible Capital Security is transferred, a new Contingent Convertible Capital Security of an aggregate Liquidation Preference equal to the amount not being transferred shall be executed by the Company, and authenticated and delivered by the Trustee to the transferor, in the name of the transferor, within three Business Days of receiving the Contingent Convertible Capital Security. The new Contingent Convertible Capital Security will be delivered to the transferor by uninsured post at the risk of the transferor to the address of the transferor appearing in the Contingent Convertible Capital Security Register. The new Contingent Convertible Capital Security will be delivered to the transferor by uninsured post at the risk of the transferor to the address of the transferor appearing in the Contingent Convertible Capital Security Register. A new Contingent Convertible Capital Security of an aggregate Liquidation Preference equal to the amount being transferred shall be delivered by the Trustee to the transferee, in the name of the transferee, within three Business Days after the Trustee acting as Paying Agent pursuant to Section 11.02 receives the Contingent Convertible Capital Security. The new Contingent Convertible Capital Security will be delivered to the transferee by uninsured post at the risk of the transferee to the address of the transferee specified in the form of transfer.

All Contingent Convertible Capital Securities issued upon any registration of transfer or exchange of Contingent Convertible Capital Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Contingent Convertible Capital Securities Indenture, as the Contingent Convertible Capital Securities surrendered upon such registration of transfer or exchange.

Every Contingent Convertible Capital Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Contingent Convertible Capital Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Contingent Convertible Capital Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Contingent Convertible Capital Securities, other than exchanges pursuant to Section 3.04, 10.06 or 12.07 not involving any transfer.



200FX&=&eN352sks=

The Company shall not be required (i) to issue, register the transfer of or exchange any Contingent Convertible Capital Security of any series during a period beginning at the opening of business 15 days before the day of the giving of a notice of redemption of Contingent Convertible Capital Securities of such series selected for redemption under Section 12.03 and ending at the close of business on the day of the giving of such notice, or (ii) to register the transfer of or exchange any Contingent Convertible Capital Security so selected for redemption in whole or in part, except the unredeemed portion of any Contingent Convertible Capital Securities being redeemed in part.

Section 3.06. *Mutilated, Destroyed, Lost and Stolen Contingent Convertible Capital Securities.* If any mutilated Contingent Convertible Capital Security (including any Global Security) is surrendered to the Trustee, the Company may execute and the Trustee shall, in the case of a Contingent Convertible Capital Security, authenticate and deliver, in exchange therefor a new Contingent Convertible Capital Security of the same series containing identical terms and provisions and of like amount, and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Contingent Convertible Capital Security (including any Global Security), and (ii) such security or indemnity as may be required by them to save each of them and any agent of any of them harmless, then, in the absence of notice to the Company or the Trustee that such Contingent Convertible Capital Security has been acquired by a bona fide purchaser, the Company shall execute and upon the Company's request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Contingent Convertible Capital Security, if any, a new Contingent Convertible Capital Security of the same series containing identical terms and provisions and of like amount, and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Contingent Convertible Capital Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Contingent Convertible Capital Security pay such Contingent Convertible Capital Security.

Upon the issuance of any new Contingent Convertible Capital Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Contingent Convertible Capital Security of any series issued pursuant to this Section in lieu of any destroyed, lost or stolen Contingent Convertible Capital Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Contingent Convertible Capital Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this





200FX&=&eN355YeL4

Contingent Convertible Capital Securities Indenture equally and proportionately with any and all other Contingent Convertible Capital Securities of that series duly issued hereunder.

The provisions of this Section, as amended or supplemented pursuant to this Contingent Convertible Capital Securities Indenture, are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Contingent Convertible Capital Securities.

*Section 3.07. Distributions. Rights Preserved.*

Except as otherwise provided in a supplemental indenture:

(a) The Company will make any payments of Distributions and Liquidation Preference on any particular series of Contingent Convertible Capital Securities on the dates that are determined pursuant to Section 3.01.

(b) The Contingent Convertible Capital Securities of any series will accrue non-cumulative cash distributions (“**Distributions**”) as may be specified in, or determined in accordance with Section 3.01.

(c) The Company has no obligation to make Distributions with respect to any series of Contingent Convertible Capital Securities.

(d) Except as otherwise provided as contemplated by Section 3.01 with respect to any series of Contingent Convertible Capital Securities, Distributions, if any, on any Contingent Convertible Capital Securities which are payable, and are paid or duly provided for, on any Distribution Payment Date shall be paid to the Person in whose name that Contingent Convertible Capital Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such Distributions.

(e) In the case of Contingent Convertible Capital Securities where payment is to be made in Dollars, payment at the Principal Paying Agent’s office outside The City of New York will be made in Dollars by check drawn on, or, at the request of the Holder, by transfer to a Dollar account maintained by the payee with, a bank in The City of New York.

(f) In the case of Contingent Convertible Capital Securities where payment is to be made in a Foreign Currency, payment will be made as established pursuant to Section 3.01.

(g) Subject to the foregoing provisions of this Section 3.07, each Contingent Convertible Capital Security delivered under this Contingent Convertible Capital Securities Indenture upon registration of transfer of or in exchange for or in lieu of any other Contingent Convertible Capital Security shall carry the rights to accrued and unpaid Distributions, if any, and to accrue Distributions, which were carried by such other Contingent Convertible Capital Security.



Section 3.08. *Distributions Discretionary.*

(a) The Company may elect, in its sole and absolute discretion, to cancel the payment of any Distribution in whole or in part at any time that it deems necessary or desirable, and for any reason.

(b) Distributions on the Contingent Convertible Capital Securities will be non-cumulative. Accordingly, if any Distribution (or part thereof) is not paid in respect of the Contingent Convertible Capital Securities of any series as a result of any election of the Company to cancel such Distribution pursuant this Section 3.08 or the limitations on payment set out in this Section 3.08 and Section 3.09 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 Company 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 Contingent Convertible Capital Securities of such series are paid in respect of any future Distribution Period.

(c) No such election to cancel the payment of any Distribution (or part thereof) pursuant to this Section 3.08 or non-payment of any Distribution (or part thereof) as a result of the limitations on payment set out in Section 3.09 will constitute an event of default, an Enforcement Event or the occurrence of any event related to the insolvency of the Company or entitle holders to take any action to cause such Distribution to be paid or the liquidation, dissolution or winding-up of the Company or in any way limit or restrict the Company from making any distribution or equivalent payment in connection with any instrument ranking junior to the Contingent Convertible Capital Securities of such series (including, without limitation, any CET1 Capital of the Company or the Group) or in respect of any other Parity Security or other Security.

Section 3.09. *Restrictions on Payments.*

(a) To the extent that (i) the Company has insufficient Available Distributable Items to make Distributions on the Contingent Convertible Capital Securities of such series scheduled for payment in the then current financial year and any equivalent payments scheduled to be made in the then current financial year in respect of any other Parity Securities or CET1 Capital securities then outstanding to the extent permitted by the Applicable Banking Regulations, in each case excluding any portion of such payments already accounted for in determining the Available Distributable Items, and/or (ii) the Regulator, in accordance with Applicable Banking Regulations, requires the Company to cancel the relevant Distribution in whole or in part, then the Company will, without prejudice to the right above to cancel at its discretion the payment of any such Distributions on the Contingent Convertible Capital Securities of such series at any time, make partial or, as the case may be, no payment of the relevant Distribution on the Contingent Convertible Capital Securities of such series.

(b) No Distributions will be made on the Contingent Convertible Capital Securities of any series until the Maximum Distributable Amount (if required) is calculated and if and to the extent that such payment would cause the Maximum Distributable Amount (if any) then applicable to the Company and/or the Group to be exceeded.



Section 3.10. *Agreement to Distribution Cancellation.*

(a) By acquiring contingent convertible capital securities, Holders and beneficial owners of the contingent convertible capital securities acknowledge and agree that:

(i) Distributions are payable solely at the Company's discretion, and no amount of Distribution shall become or remain due and payable in respect of the relevant Distribution Period to the extent that it has been cancelled by the Company at the Company's sole discretion and/or deemed cancelled as a result of our having insufficient Available Distributable Items or as a result of the Regulator requiring the Company to cancel the Distributions or as a result of exceeding the Maximum Distributable Amount (if any) then applicable to the Company and/or the Group; and

(ii) a cancellation or deemed cancellation of Distributions (in each case, in whole or in part) in accordance with the terms of this Contingent Convertible Capital Securities Indenture or applicable supplemental indenture and the Contingent Convertible Capital Securities shall not constitute an Enforcement Event or other default under the terms of the Contingent Convertible Capital Securities or the Capital Securities Indenture.

(b) Distributions will only be due and payable on a Distribution Payment Date to the extent they are not cancelled or deemed cancelled previously or thereafter in accordance with Section 3.08, Section 3.09, Section 3.10, Section 6.02 and Section 4.01. Any Distributions cancelled or deemed cancelled (in each case, in whole or in part) in the circumstances described herein shall not be due and shall not accumulate or be payable at any time thereafter, and holders of the contingent convertible capital securities shall have no rights thereto or to receive any additional Distributions or compensation as a result of such cancellation or deemed cancellation.

Section 3.11. *Notice of Distribution Cancellation.* If practicable, the Company will provide notice of any cancellation or deemed cancellation of Distributions (in each case, in whole or in part) to the holders of the Contingent Convertible Capital Securities through the relevant Clearing System (or, if the Contingent Convertible Capital Securities are held in definitive form, to the holders of the Contingent Convertible Capital Securities directly at their addresses shown on the register for the Contingent Convertible Capital Securities) and to the Trustee directly on or prior to the relevant Distribution Payment Date. Failure to provide such notice will have no impact on the effectiveness of, or otherwise invalidate, any such cancellation or deemed cancellation of Distributions (and accordingly, such Distributions will not be due and payable), or give the holders of the Contingent Convertible Capital Securities any rights as a result of such failure.



Section 3.12. *Persons Deemed Owners.* Prior to due presentment of a Contingent Convertible Capital Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Contingent Convertible Capital Security is registered as the owner of such Contingent Convertible Capital Security for the purpose of receiving payment of Liquidation Preference of and (subject to Section 3.05 and Section 3.07) any Distribution on such Contingent Convertible Capital Security and for all other purposes whatsoever, whether or not such Contingent Convertible Capital Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary. The aggregate Liquidation Preference of the Contingent Convertible Capital Securities of any series shall be reflected on the books and records of the Contingent Convertible Capital Security Registrar.

None of the Company, the Trustee, the Paying Agent or the Contingent Convertible Capital Security Registrar shall have any responsibility or obligation to any beneficial owner in a Global Security, any Agent Member or any other Person with respect to the accuracy of the records of the Depositary or its nominee or of any Agent Member, with respect to any ownership interest in the Contingent Convertible Capital Securities or with respect to the delivery to any Agent Member, beneficial owner or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Contingent Convertible Capital Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Contingent Convertible Capital Securities and this Contingent Convertible Capital Securities Indenture shall be given or made only to or upon the order of the Holders (which shall be the Depositary or its nominee in the case of the Global Security). The rights of beneficial owners in the Global Security shall be exercised only through the Depositary subject to the applicable procedures. The Company, the Trustee, the Paying Agent and the Contingent Convertible Capital Security Registrar shall be entitled to rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its Agent Members and any beneficial owners. The Company, the Trustee, the Paying Agent and the Contingent Convertible Capital Security Registrar shall be entitled to deal with the Depositary, and any nominee thereof, that is the Holder of any Global Security for all purposes of this Contingent Convertible Capital Securities Indenture relating to such Global Security (including the payment of Liquidation Preference and Distributions and Additional Amounts, if any, and the giving of instructions or directions by or to the owner or holder of a beneficial ownership interest in such Global Security) as the sole Holder and shall have no obligations to the beneficial owners thereof. None of the Company, the Trustee, the Paying Agent or the Contingent Convertible Capital Security Registrar shall have any responsibility or liability for any acts or omissions of the Depositary with respect to such Global Security, for the records of any such Depositary, including records in respect of beneficial ownership interests in respect of any such Global Security, for any transactions between the Depositary and any Agent Member or between or among the Depositary, any such Agent Member and/or any holder or owner of a beneficial interest in such Global Security, or for any transfers of beneficial interests in any such Global Security.



Notwithstanding the foregoing, with respect to any Global Security, nothing herein shall prevent the Company, the Trustee, or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by any Depository (or its nominee), as a Holder, with respect to such Global Security or shall impair, as between such Depository and owners of beneficial interests in such Global Security, the operation of customary practices governing the exercise of the rights of such Depository (or its nominee) as Holder of such Global Security.

Each Holder and beneficial owner that acquires its Contingent Convertible Capital Security in the secondary market shall be deemed to acknowledge and agree to be bound by and consent to the same provisions specified in this Contingent Convertible Capital Securities Indenture and the Contingent Convertible Capital Securities to the same extent as the Holders and beneficial owners of the Contingent Convertible Capital Securities that acquire the Contingent Convertible Capital Securities upon their initial issuance, including, without limitation, with respect to the acknowledgement and agreement to be bound by and consent to the terms of the Contingent Convertible Capital Securities, including, without limitation, in relation to Distribution cancellation, the Trigger Conversion, the Bail-in Power and the limitations on remedies specified in the Contingent Convertible Capital Security and Section 6.03.

Section 3.13. *Cancellation.* All Contingent Convertible Capital Securities surrendered for payment, redemption, registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Contingent Convertible Capital Securities previously authenticated and delivered hereunder, and all Contingent Convertible Capital Securities so delivered shall be promptly cancelled by the Trustee. No Contingent Convertible Capital Securities shall be authenticated in lieu of or in exchange for any Contingent Convertible Capital Securities cancelled as provided in this Section, except as expressly permitted by the provisions of the Contingent Convertible Capital Securities of any series or pursuant to the provisions of this Contingent Convertible Capital Securities Indenture. The Trustee shall deliver to the Company all cancelled Contingent Convertible Capital Securities held by the Trustee.

Section 3.14. *Computation of Distributions.* Except as otherwise specified pursuant to Section 3.01 for Contingent Convertible Capital Securities of any series, Distributions on the Contingent Convertible Capital Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 3.15. *Cusip Numbers.* The Company in issuing Contingent Convertible Capital Securities may use “CUSIP”, “ISIN” and/or “Common Code” and/or other similar numbers (if then generally in use) or any successor to such numbers and thereafter with respect to such series, and, if so, the Trustee shall use “CUSIP”, “ISIN” and/or “Common Code” and/or other similar numbers or successor numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Contingent Convertible Capital Securities or as contained in any notice of a redemption



200FX&=eN3sL9TsY

and that reliance may be placed only on the other identification numbers printed on the Contingent Convertible Capital Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the “CUSIP”, “ISIN” and/or “Common Code” and/or other similar numbers or successor numbers.

Section 3.16. *Additional Contingent Convertible Capital Securities.* (a) The Company may without the consent or sanction of the Holders of the Contingent Convertible Capital Securities of any series: (i) take any action required to issue additional Parity Securities or authorize, create and issue one or more other series of Parity Securities ranking equally with the Contingent Convertible Capital Securities of such series, as to the participation in the profits and/or assets of the Company, without limit as to the amount; or (ii) take any action required to authorize, create and issue one or more other classes or series of shares of the Company or securities mandatorily convertible into Common Shares of the Company ranking junior to the Contingent Convertible Capital Securities, as to the participation in the profits and/or assets of the Company.

(b) By acquiring a Contingent Convertible Capital Securities, Holders of Contingent Convertible Capital Securities agree to renounce any rights of seniority or preference that may be conferred upon it (if any) under applicable Spanish law over any Holder of such other Parity Securities issued by the Company from time to time.

(c) The Contingent Convertible Capital Securities do not grant the Holders of the Contingent Convertible Capital Securities of such series pre-emption rights in respect of any possible future issues of Parity Securities or any other securities by the Company or any Subsidiary.

(d) The Company may, without the consent of the Holders of the Contingent Convertible Capital Securities of any series, issue additional Contingent Convertible Capital Securities (“**Additional Contingent Convertible Capital Securities**”) of one or more of the series of Contingent Convertible Capital Securities issued under this Contingent Convertible Capital Securities Indenture having the same ranking and same Distribution Rate, redemption terms and other terms as the Contingent Convertible Capital Securities of such series except for the price to the public, original Distribution accrual date, issue date and first Distribution Payment Date, provided however that such Additional Contingent Convertible Capital Securities will not have the same CUSIP, ISIN or other identifying number as the outstanding Contingent Convertible Capital Securities of the relevant series unless the Additional Contingent Convertible Capital Securities are fungible with the outstanding Contingent Convertible Capital Securities of the relevant series for U.S. federal income tax purposes. Any such Additional Contingent Convertible Capital Securities, together with the Contingent Convertible Capital Securities of the relevant series, will constitute a single series of Contingent Convertible Capital Securities under this Contingent Convertible Capital Securities Indenture.

Section 3.17. *Correction of Minor Defects in or Amendment of Contingent Convertible Capital Securities.* If, after issuance of any Contingent Convertible Capital



Security (including any Global Security), the Company or the Trustee shall become aware of any ambiguity, defect or inconsistency in any term of a Contingent Convertible Capital Security or Global Security, as the case may be, or, with respect to any Contingent Convertible Capital Security (including any Global Security) issued on or after the date hereof, the Company and the Trustee agree to amend such Contingent Convertible Capital Security as contemplated by Section 10.01, the parties hereto shall provide for the execution, authentication, delivery and dating of one or more replacement Contingent Convertible Capital Securities or Global Securities, as the case may be, pursuant to Section 3.03 hereto.

Section 3.18. *Payments Subject to Fiscal Laws.* All payments in respect of the Contingent Convertible Capital Securities will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment (including FATCA, any regulations or agreements thereunder, any official interpretation thereof, any intergovernmental agreements with respect thereto, or any law implementing an intergovernmental agreement or any regulations or official interpretations relating thereto), but without prejudice to the provisions of Section 11.04.

Section 3.19. *Undertakings.* So long as any Contingent Convertible Capital Security remains outstanding, the Company shall, unless approved by a majority in aggregate Liquidation Preference of such series:

(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, Common 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 Common 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 specified offices of the Paying and Conversion Agents and, where such an offer or scheme has been recommended by the Board of Directors, or where such an offer has become or been declared unconditional in all respects or such scheme has become effective, use all commercially reasonable endeavors to procure that a like offer or scheme is extended to the holders of any Common Shares issued during the period of the offer or scheme arising out of the Trigger Conversion;

(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 this Contingent Convertible Capital Securities Indenture immediately after completion of the Scheme of Arrangement as are necessary to ensure that the Contingent Convertible Capital Securities may be converted into or exchanged for ordinary shares in Newco (or depository or other receipts or certificates representing ordinary shares of Newco) *mutatis mutandis* in accordance with and subject to this Contingent Convertible Capital Securities Indenture and the ordinary shares of Newco are:

(i) admitted to the Relevant Stock Exchange; or

(ii) listed and/or admitted to trading on another Recognized Stock Exchange, and the Holders of the Contingent Convertible Capital Securities of the relevant series irrevocably authorize the Company to make such amendments to this Contingent Convertible Capital Securities Indenture without the need for any further authorization from the holders of the Contingent Convertible Capital Securities of such series;



(d) issue, allot and deliver Common Shares upon Trigger Conversion subject to and as provided in Section 4.01 above;

(e) use all reasonable endeavors to ensure that its issued and outstanding Common Shares and any Common 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 Recognized Stock Exchange;

(f) at all times keep in force the relevant resolutions needed for issue, free from pre-emptive rights, sufficient authorized but unissued Common Shares to enable Trigger Conversion of the Contingent Convertible Capital Securities, and all rights of subscription and exchange for Common Shares, to be satisfied in full; and

(g) where the provisions of Section 4.01 require or provide for a determination by an Independent Financial Adviser or a role to be performed by a Settlement Shares Depository or a Paying and Conversion Agent, the Company shall use all reasonable endeavors promptly to appoint such persons for such purposes.

**ARTICLE 4**  
CONVERSION OF THE CONTINGENT CONVERTIBLE CAPITAL SECURITIES

Section 4.01. *Conversion upon Trigger Event.*

(a) If the Trigger Event occurs at any time on or after the issue date of any series of Contingent Convertible Capital Securities, then the Company will:

(i) not declare or pay any Distribution on the Contingent Convertible Capital Securities of such series, including any accrued and unpaid Distributions, which shall be cancelled by the Company in accordance with Section 3.08 and Section 3.09; and

(ii) irrevocably and mandatorily (and without any requirement for the consent or approval of the Holders of Contingent Convertible Capital Securities of such series) convert all the Contingent Convertible Capital Securities of such series into Common Shares (the “**Trigger Conversion**”) to be delivered on the relevant Conversion Settlement Date. If the Trigger Event occurs, the Contingent Convertible Capital Securities of any series will be converted in whole and not in part.





(b) For the purposes of the Company determining whether the Trigger Event has occurred, it will calculate the CET1 ratio based on information (whether or not published) available to management of the Company, including information internally reported within the Company pursuant to its procedures for ensuring effective ongoing monitoring of the capital ratios of the Company and the Group. Banco Santander publishes the CET1 ratio on at least a quarterly basis. The Company's or the Regulator's calculation shall be binding on the Trustee and the Holders of the relevant series of Contingent Convertible Capital Securities.

(c) Subject as provided in this Section 4.01(c) with respect to fractions, the number of Conversion Shares shall be determined by dividing the Liquidation Preference of such Contingent Convertible Capital Security by the relevant Conversion Price in effect on the relevant Trigger Event Notice Date. Fractions of Common Shares will not be issued on Trigger Conversion and no cash payment or other adjustment will be made in lieu thereof. Without prejudice to the generality of the foregoing, if one or more Delivery Notices and the related Contingent Convertible Capital Securities are received by or on behalf of the Paying and Conversion Agent such that the Conversion Shares or related ADSs to be delivered by or on behalf of the Settlement Shares Depository are to be registered in the same name or delivered to the same Clearing Agency participant account, the number of such Conversion Shares to be delivered in respect thereof shall be calculated on the basis of the aggregate Liquidation Preference of such contingent convertible capital securities being so converted and rounded down to the nearest whole number of Common Shares or related ADSs, as applicable.

(d) Upon any Trigger Event of any series of Contingent Convertible Capital Securities, Holders shall have no claim against the Company in respect of (i) any Liquidation Preference of such series of Contingent Convertible Capital Securities or (ii) any accrued and unpaid Distributions cancelled or otherwise unpaid in respect of Contingent Convertible Capital Securities of such series and the Contingent Convertible Capital Securities of such series shall cease to represent any right other than the right to receive Common Shares, if elected, or ADSs from or on behalf of the Settlement Shares Depository.

(e) On the Conversion Settlement Date, the Company shall deliver to the Settlement Shares Depository such number of Common Shares as is required to satisfy in full the Company's obligation to deliver Common Shares in respect of the Trigger Conversion of the aggregate Liquidation Preference of contingent convertible capital securities of such series outstanding on the Trigger Event Notice Date.

(f) The obligation of the Company to issue and deliver Conversion Shares to a Holder of Contingent Convertible Capital Securities of any series on the relevant Conversion Settlement Date shall be satisfied by the delivery of such Conversion Shares to the Settlement Shares Depository. Receipt of the relevant Conversion Shares by the Settlement Shares Depository shall discharge the Company's obligations in respect of such Contingent Convertible Capital Securities.



(g) Holders of any series of Contingent Convertible Capital Securities shall have recourse to the Company only for the issue and delivery of the relevant Conversion Shares to the Settlement Shares Depository. After such delivery, Holders of any series of Contingent Convertible Capital Securities shall have recourse to the Settlement Shares Depository only for the delivery to them of such Conversion Shares or related ADSs, in the circumstances described in Section 4.06.

Section 4.02. *Conversion Price.*

“Conversion Price” means, on the Trigger Event Notice Date, if the Common Shares are:

- (a) then admitted to trading on a Relevant Stock Exchange, the higher of:
  - (i) the Current Market Price of a Common Share;
  - (ii) the Floor Price; and
  - (iii) the nominal value of a Common Share, in each case on the Trigger Event Notice Date; or
- (b) not then admitted to trading on a Relevant Stock Exchange, the higher of (ii) and (iii) above.

Section 4.03. *Anti-Dilution Adjustment of the Floor Price.* For the purposes of this Section 4.03 only (a) references to the “issue” of Common Shares or Common Shares being issued shall, if not otherwise expressly specified in this Contingent Convertible Capital Securities Indenture, include the transfer and/or delivery of Common Shares, whether newly issued and allotted or previously existing or held by or on behalf of the Company or any member of the Group, and (b) Common Shares held by or on behalf of the Company or any member of the Group (and which, in the case of Section 4.03(a)(iv) and Section 4.03(a)(vi), 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.

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.



(a) Upon the happening of any of the events described below and unless otherwise provided in the relevant prospectus supplement, the Floor Price of any series of Contingent Convertible Capital Securities shall be adjusted as follows:

(i) If and whenever there shall be a consolidation, reclassification/redesignation or subdivision affecting the number of Common 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 Common Shares in issue immediately before such consolidation, reclassification/redesignation or subdivision, as the case may be; and
- B is the aggregate number of Common 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.

(ii) If and whenever the Company shall issue any Common Shares credited as fully paid to Shareholders by way of capitalization of profits or reserves (including any share premium account or capital redemption reserve) other than (i) where any such Common Shares are or are to be issued instead of the whole or part of a Cash Dividend which Shareholders would or could otherwise have elected to receive, (ii) where Shareholders may elect to receive a Cash Dividend in lieu of such Common Shares or (iii) where any such Common Shares are or are expressed to be issued in lieu of a Dividend (whether or not a Cash Dividend equivalent or amount is announced or would otherwise be payable to Shareholders, whether at their election or otherwise), 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 Common Shares in issue immediately before such issue; and
- B is the aggregate number of Common Shares in issue immediately after such issue.



Such adjustment shall become effective on the first day on which Common Shares are traded ex-rights on the relevant Stock Exchange.

(iii) (A) If and whenever the Company shall pay any Extraordinary Dividend to its shareholders, the Floor Price shall be adjusted by multiplying the Floor Price in force immediately prior to the Effective Date by the following fraction:

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

where:

- A is the Current Market Price of one Common Share on the Effective Date;
- B is the portion of the Fair Market Value of the aggregate Extraordinary Dividend attributable to one Common Share, with such portion being determined by dividing the Fair Market Value of the aggregate Extraordinary Dividend by the number of Common Shares entitled to receive the relevant Dividend; and
- C is the amount (if any) by which the Reference Amount determined in respect of the Relevant Dividend exceeds an amount equal to the aggregate of the Fair Market Values of any previous Cash Dividends per Common Share paid or made in such Relevant Year (where C shall equal zero if such previous Cash Dividends per Common Share are equal to, or exceed, the Reference Amount in respect of the Relevant Year). For the avoidance of doubt, "C" shall equal the Reference Amount determined in respect of the Relevant Dividend where no previous Cash Dividends per Common Share have been paid or made in such Relevant Year.

Such adjustment shall become effective on the Effective Date or, if later, the first date upon which the Fair Market Value of the relevant Extraordinary Dividend can be determined.

"Effective Date" means, in respect of this Section 4.03(a)(iii)(A), the first date on which the Common Shares are traded ex-the relevant Cash Dividend on the Relevant Stock Exchange.

"Extraordinary Dividend" means (i) any Cash Dividend which is expressly declared by the Company to be a capital distribution, extraordinary dividend, extraordinary distribution, special dividend, special distribution or return of value to its shareholders or any analogous or similar term (including any distribution made as a result of any capital reduction), in which case the Extraordinary Dividend shall be such Cash Dividend; or (ii) any Cash Dividend (the "Relevant Dividend") paid or made in a financial year of the Company (the "Relevant Year") if (A) the Fair Market Value of the Relevant Dividend per Common Share or (B) the sum of (I) the Fair Market Value of the Relevant Dividend per Common Share and (II) an amount equal to the aggregate of the



Fair Market Value or Fair Market Values of any other Cash Dividend or Cash Dividends per Common Share paid or made in the Relevant Year (other than any Cash Dividend or part thereof previously determined to be an Extraordinary Dividend paid or made in such Relevant Year), exceeds the Reference Amount, and in that case the Extraordinary Dividend shall be the amount by which the Reference Amount is so exceeded.

“Reference Amount” means an amount per Ordinary Share that is consistent with the dividend policy of the Company as applied or to be applied for a period or projected period of at least three years.

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

Such adjustment shall become effective on the 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.

“Effective Date” means, in respect of this Section 4.03(a)(iii)(B), the first date on which the Common Shares are traded ex-the relevant Dividend on the Relevant Stock Exchange or, in the case of a purchase, redemption or buy back of Common Shares or any depositary or other receipts or certificates representing Common Shares by or on behalf of the Company 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) or in the case of a Spin-Off, the first date on which the Common Shares are traded ex-the relevant Spin-Off on the Relevant Stock Exchange.



(C) 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 Effective Date.

(D) In making any calculations for the purposes of this Section 4.03(a)(iii), such adjustments (if any) shall be made as an Independent Financial Adviser may determine in good faith to be appropriate to reflect (A) any consolidation or sub-division of any Common Shares or (B) the issue of Common Shares by way of capitalization of profits or reserves (or any like or similar event) or (C) any increase in the number of Common Shares in issue in the Relevant Year in question.

(iv) If and whenever the Company shall issue Common Shares to its shareholders as a class by way of rights, or the Company or any member of the Group or (at the direction or request or pursuant to any arrangements with the Company or any member of the Group) any other company, person or entity shall issue or grant to its shareholders as a class by way of rights, any options, warrants or other rights to subscribe for or purchase or otherwise acquire any Common 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 Common Shares (or shall grant any such rights in respect of existing Securities so issued), in each case at a price per Common Share which is less than 95 percent. of the Current Market Price per Common 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 Common Shares in issue on the Effective Date;
- B is the number of Common Shares which the aggregate consideration (if any) receivable for the Common 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 Common Shares deliverable on the exercise thereof, would purchase at such Current Market Price per Common Share; and
- C is the number of Common Shares to be issued or, as the case may be, the maximum number of Common 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 Common Shares are traded ex-rights, ex-options or ex-warrants on the Relevant Stock Exchange (as used in this Section 4.03(a)(iv), the “Specified Date”) such number of Common 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 Section 4.03(a)(iv), “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 Section 4.03(a)(iv), the first date on which the Common Shares are traded ex-rights, ex-options or ex-warrants on the Relevant Stock Exchange.

(v) If and whenever the Company or any member of the Group or (at the direction or request or pursuant to any arrangements with the Company or any member of the Group) any other company, person or entity shall issue any Securities (other than Common Shares or options, warrants or other rights to subscribe for or purchase or otherwise acquire any Common 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, Common Shares) to its shareholders as a class by way of rights or grant to its 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 Common Shares or options, warrants or other rights to subscribe for or purchase or otherwise acquire Common Shares or Securities which by their term carry (directly or indirectly) rights of conversion into, or exchange or subscription for, rights to otherwise acquire, Common 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 Common 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 Common Share.



Such adjustment shall become effective on the Effective Date.

“Effective Date” means, in respect of this Section 4.03(a)(v), the first date on which the Common Shares are traded ex-the relevant Securities or ex-rights, ex-option or ex-warrants on the Relevant Stock Exchange.

(vi) If and whenever the Company shall issue (otherwise than as mentioned in Section 4.03(a)(iv) above) wholly for cash or for no consideration any Common Shares (other than Common Shares issued on conversion of any series of Contingent Convertible Capital Securities or on the exercise of any rights of conversion into, or exchange or subscription for or purchase of, or right to otherwise acquire Common Shares) or if and whenever the Company or any member of the Group or (at the direction or request or pursuant to any arrangements with the Company or any member of the Group) any other company, person or entity shall issue or grant (otherwise than as mentioned in Section 4.03(a)(iv) above) wholly for cash or for no consideration any options, warrants or other rights to subscribe for or purchase or otherwise acquire any Common Shares (other than the Contingent Convertible Capital Securities of any series, which for this purpose include any Further Contingent Convertible Capital Securities), in each case at a price per Common Share which is less than 95 percent of the Current Market Price per Common 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 Common Shares in issue immediately before the issue of such Common Shares or the grant of such options, warrants or rights;
- B is the number of Common Shares which the aggregate consideration (if any) receivable for the issue of such Common Shares or, as the case may be, for the Common 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 Common Share on the Effective Date; and
- C is the number of Common Shares to be issued pursuant to such issue of such Common Shares or, as the case may be, the maximum number of Common 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 Common Shares or date of issue or grant of such options, warrants or rights (as used in this Section 4.03(a)(vi), the “Specified Date”), such number of Common 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 Section 4.03(a)(vi), “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 Section 4.03(a)(vi), the date of issue of such Common Shares or, as the case may be, the grant of such options, warrants or rights.

(vii) If and whenever the Company or any member of the Group or (at the direction or request of or pursuant to any arrangements with the Company or any member of the Group) any other company, person or entity (otherwise than as mentioned in Section 4.03(a)(iv), Section 4.03(a)(v) or Section 4.03(a)(vi)) shall issue wholly for cash or for no consideration any Securities (other than Contingent Convertible Capital Securities of any series) 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, Common 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 Common Shares, and the consideration per Common Share receivable upon conversion, exchange, subscription, purchase, acquisition or redesignation is less than 95 percent of the Current Market Price per Common 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 Common 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 Common Shares which have been issued, purchased or acquired by the Company or any member of the Group (or at the direction or request or pursuant to any arrangements with the Company or any member of the Group) for the purposes of or in connection with such issue, less the number of such Common Shares so issued, purchased or acquired);



- B is the number of Common Shares which the aggregate consideration (if any) receivable for the Common 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 Common Shares to be issued or to arise from any such reclassification/redesignation would purchase at such Current Market Price per Common Share; and
- C is the maximum number of Common 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 Common 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 Section 4.03(a)(vii), the "Specified Date") such number of Common 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 Section 4.03(a)(vii), "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 Section 4.03(a)(vii), the date of issue of such Securities or, as the case may be, the grant of such rights.

(viii) If and whenever there shall be any modification of the rights of conversion, exchange, subscription, purchase or acquisition attaching to any Securities (other than the Contingent Convertible Capital Securities of any series) pursuant to Section 4.03(a)(vii) 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 Common Share receivable has been reduced and is less than 95 percent of the Current Market Price per Common 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 Common 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, Common Shares which have been issued, purchased or acquired by the Company or any member of the Group (or at the direction or request or pursuant to any arrangements with the Company or any member of the Group) for the purposes of or in connection with such Securities, less the number of such Common Shares so issued, purchased or acquired);
- B is the number of Common Shares which the aggregate consideration (if any) receivable for the Common 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 Common 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 Common 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 Section 4.03(a)(viii) or Section 4.03(a)(vii);

provided that if at the time of such modification (as used in this Section 4.03(a)(viii), the “Specified Date”) such number of Common 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 Section 4.03(a)(viii), “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 Section 4.03(a)(viii), the date of modification of the rights of conversion, exchange, subscription, purchase or acquisition attaching to such Securities.



(ix) If and whenever the Company or any member of the Group or (at the direction or request of or pursuant to any arrangements with the Company or any member of the Group) any other company, person or entity shall offer any Securities in connection with which its 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 Section 4.03(a)(ii), Section 4.03(a)(iii), Section 4.03(a)(iv), Section 4.03(a)(v), Section 4.03(a)(v) or Section 4.03(a)(x) (or would fall to be so adjusted if the relevant issue or grant was at less than 95 percent of the Current Market Price per Common Share on the relevant dealing day under Section 4.03(a)(v) 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 Common 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 Common Share.

Such adjustment shall become effective on the Effective Date.

“Effective Date” means, in respect of this Section 4.03(a)(ix), the first date on which the Common Shares are traded ex-rights on the Relevant Stock Exchange.

(x) If the Company 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 of the contingent convertible capital securities of such relevant series) in such manner and with effect from such date as Banco Santander shall determine and notify to the holders of the relevant series of contingent convertible capital securities.

(b) Notwithstanding Section 4.03(a):

(i) where the events or circumstances giving rise to any adjustment of the Floor Price 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 Company, a modification to the operation of the adjustment provisions is required to give the intended result, such modification



200FX&amp;=8eN3jKRP54

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 as may be determined in good faith by an Independent Financial Adviser 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.

(c) For the purpose of any calculation of the consideration receivable or price pursuant to Section 4.03(a)(iv), Section 4.03(a)(vi), Section 4.03(a)(vii) and Section 4.03(a)(viii) above, the following provisions shall apply:

(i) the aggregate consideration receivable or price for Common Shares issued for cash shall be the amount of such cash;

(ii) (A) the aggregate consideration receivable or price for Common 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 (B) the aggregate consideration receivable or price for Common Shares to be 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 Company 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 Section 4.03(a)(iv), Section 4.03(a)(vi), Section 4.03(a)(vii) or Section 4.03(a)(viii) above, as the case may be, plus in the case of each of (A) and (B) 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 (C) the consideration receivable or price per Common Share upon the conversion or exchange of, or upon the exercise of such rights of subscription attached to, such Securities 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 (A) or (B) above (as the case may be) divided by the number of Common Shares to be issued upon such conversion or exchange or exercise at the initial conversion, exchange or subscription price or rate;

(iii) if the consideration or price determined pursuant to (I) or (II) 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 (I) above) or the relevant date of first public announcement (in the case of (II) above);



(iv) 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 Common Shares or Securities or options, warrants or rights, or otherwise in connection therewith; and

(v) 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 Company or another entity.

(d) If the record date in respect of any consolidation, reclassification/ redesignation or sub-division as is mentioned in Section 4.03(a)(i), or 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 Section 4.03(a)(ii), Section 4.03(a)(iii), Section 4.03(a)(iv), Section 4.03(a)(v) or Section 4.03(a)(ix), or the date of the first public announcement of the terms of any such issue or grant as is mentioned in Section 4.03(a)(vi) and Section 4.03(a)(vii) above or of the terms of any such modification as is mentioned in Section 4.03(a)(viii) above, shall be after the Trigger Event Notice Date in relation to the conversion of any Contingent Convertible Capital Security of any series but before the date on which the resolution of issuance of the relevant Common Shares is approved, then the Company shall procure the execution of the corresponding adjustment mechanism pursuant to this Section 4.03 so that there shall be issued and delivered to the Settlement Shares Depository, for onward delivery to the holders of the relevant Contingent Convertible Capital Securities, in accordance with the instructions contained in the Delivery Notices received by the Settlement Shares Depository, such number of Common Shares that could be required to be issued and delivered on such conversion taking into account the relevant adjustment to the Floor Price pursuant to this Section 4.03 and all references to the issue and/or delivery of Common Shares or Conversion Shares in this Contingent Convertible Capital Securities Indenture shall be construed accordingly.

(e) 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 Company 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 willful default, bad faith or manifest error.

(f) No adjustment will be made to the Floor Price where Common 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 Company or any of member of the Group or any associated company or to a trustee or trustees or intermediary to be held for the benefit of any such person, in any such case pursuant to any share or option or similar scheme.

(g) On any adjustment, the resultant Floor Price, if a number of more decimal places than the initial Floor Price, shall be rounded down to such decimal place. No adjustment shall be made to the Floor Price where such adjustment (rounded down if applicable) would be less than 1 percent 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.

(h) Notice of any adjustments to the Floor Price shall be given by the Company to holders of the Contingent Convertible Capital Securities of any series through the filing of a relevant event (*hecho relevante*) announcement with the CNMV and its publication in accordance with the rules and regulations of any applicable stock exchange or other relevant authority and in accordance with Section 1.06 promptly after the determination thereof.

Section 4.04. *Conversion Procedures. Settlement Shares.*

(a) If the Trigger Event occurs at any time on or after the issue date of any series of Contingent Convertible Capital Securities, then the Company will notify the Regulator and holders of such series of contingent convertible capital securities immediately through (i) the filing of a relevant event (*hecho relevante*) announcement with the CNMV and its publication in accordance with the rules and regulations of any applicable stock exchange or other relevant authority and (ii) to the Regulator, Holders and Trustee in accordance with Section 1.06 (the “**Trigger Event Notice**”).

(b) A Trigger Event Notice shall be a written notice specifying the following information:

- (i) that a Trigger Event has occurred;
- (ii) the then-prevailing Conversion Price (which Conversion Price shall remain subject to any subsequent adjustment as set forth under Section 4.03);
- (iii) the Conversion Settlement Date;
- (iv) the date on which the Company expects DTC to suspend all clearance and settlement of transactions in the Securities in accordance with its rules and procedures (the “**Suspension Date**”);
- (v) the contact details of the Settlement Shares Depository (if one has been appointed) and Paying and Conversion Agent and the procedures holders of the contingent convertible capital securities must follow to obtain delivery of the Conversion Shares or related ADSs;



(vi) if the Company has been unable to appoint a Settlement Shares Depository, such other arrangements for the issuance and/or delivery of the Conversion Shares to the Holders of the Contingent Convertible Capital Securities of such series as it shall consider reasonable in the circumstances;

(vii) that the Contingent Convertible Capital Securities shall remain in existence for the sole purpose of evidencing the holder's right to receive Common Shares or related ADSs from or on behalf of the Settlement Shares Depository.

The failure to notify the Regulator and Holders of such series of Contingent Convertible Capital Securities as aforesaid will not invalidate the conversion.

(c) The date on which the Trigger Event Notice shall be deemed to have been given shall be the date on which it is dispatched by the Company to DTC.

(d) Upon the Company's determination that a Trigger Event has occurred, it shall immediately inform the Regulator and shall, prior to giving a Trigger Event Notice, deliver to the Trustee a certificate stating that a Trigger Event has occurred, which the Trustee shall accept without any further enquiry as sufficient evidence of such matters, in which event such certificate will be conclusive and binding on the Trustee, the Holders and beneficial owners of the contingent convertible capital securities of such series.

(e) Within two (2) Business Days after its receipt of the Trigger Event Notice, the Trustee shall transmit the Trigger Event Notice to DTC and promptly following its receipt of the Trigger Event Notice, pursuant to DTC's procedures currently in effect, DTC will post the Trigger Event Notice to its Reorganization Inquiry for Participants System.

(f) If the Trigger Event occurs, the Contingent Convertible Capital Securities of any series will be converted in whole and not in part.

(g) Notwithstanding anything set forth in this Contingent Convertible Capital Securities Indenture to the contrary, once the Company has delivered a Trigger Event Notice following the occurrence of a Trigger Event, (i) subject to the right of holders of the Contingent Convertible Capital Securities of the relevant series relating to a breach of the Performance Obligation in the event of a failure by the Company to issue and deliver any Common Shares to the Settlement Shares Depository on the Conversion Settlement Date, this Contingent Convertible Capital Securities Indenture shall impose no duties upon the Trustee whatsoever with regard to a Trigger Conversion and the Holders of the Contingent Convertible Capital Securities of such series shall have no rights whatsoever under this Contingent Convertible Capital Securities Indenture or the Contingent Convertible Capital Securities of such series to instruct the Trustee to take any action whatsoever and (ii) as of the date of the Trigger Event Notice, except for any indemnity and/or security provided by any holders of the Contingent Convertible Capital Securities of such series in such direction or related to such direction, any direction previously given to the Trustee by any Holders of the Contingent Convertible Capital Securities of such series shall cease automatically and shall be null and void and of no further effect.





(h) The Company's obligations to indemnify the Trustee in accordance with this Contingent Convertible Capital Securities Indenture shall survive any Trigger Conversion.

Section 4.05. *Agreement and Waiver with Respect to Trigger Conversion.* The Contingent Convertible Capital Securities of any series are not convertible into Common Shares at the option of Holders of Contingent Convertible Capital Securities of any series at any time and are not redeemable in cash as a result of a Trigger Event. Notwithstanding any other provision herein, by its acquisition of the Contingent Convertible Capital Securities of any series, each Holder and beneficial owner shall be deemed to have (i) agreed to all the terms and conditions of the Contingent Convertible Capital Securities of such series, including, without limitation, those related to (x) Trigger Conversion following a Trigger Event and (y) the appointment of the Settlement Shares Depository, the issuance of the Settlement Shares to the Settlement Shares Depository (or to the relevant recipient in accordance with the terms of the Contingent Convertible Capital Securities of such series), and acknowledged that such events in (x) and (y) may occur without any further action on the part of the Holders or beneficial owner of the Contingent Convertible Capital Securities of such series or the Trustee, (ii) agreed that effective upon, and following, the Trigger Conversion, no amount shall be due and payable to the Holders of the Contingent Convertible Capital Securities of such series, and the Company's liability to pay any such amounts (including the Liquidation Preference of, or any Distribution in respect of, the Contingent Convertible Capital Securities of such series), except as noted under Section 4.06 with respect to certain stamp and similar taxes, shall be automatically released, and the Holders shall not have the right to give a direction to the Trustee with respect to the Trigger Event and any related Trigger Conversion, (iii) waived, to the extent permitted by the Trust Indenture Act, any claim against the Trustee arising out of its acceptance of its trusteeship under, and the performance of its duties, powers and rights in respect of, this Contingent Convertible Capital Securities Indenture and in connection with the Contingent Convertible Capital Securities of such series, including, without limitation, claims related to or arising out of or in connection with a Trigger Event and/or any Trigger Conversion and (iv) authorized, directed and requested DTC, the European Clearing Systems and any direct participant in DTC, the European Clearing Systems or other intermediary through which it holds such Contingent Convertible Capital Securities to take any and all necessary action, if required, to implement the Trigger Conversion without any further action or direction on the part of such Holder of the Contingent Convertible Capital Securities of such series or the Trustee.

Section 4.06. *Settlement Procedures.*

(a) Delivery of the Common Shares, or, if the Holder elects, ADSs, to the Holders of any series of Contingent Convertible Capital Securities upon a Trigger Event shall be made in accordance with the procedures set forth in this Section 4.06, which remain subject to change to reflect changes in clearing system practices.



(b) Holders of any series of Contingent Convertible Capital Securities cleared and settled through DTC may elect to have their Common Shares delivered in the form of Common Shares or ADSs in accordance with the procedures set forth in this Section 4.06. The obligation to deliver ADSs if a Holder elects to have its Common Shares delivered in such form will apply only if at the time of any Trigger Conversion the Company continues to maintain an ADS depository facility.

(c) The Trigger Event Notice shall specify the Suspension Date. On the Suspension Date, DTC shall suspend all clearance and settlement of transactions in the relevant series of Contingent Convertible Capital Securities. As a result, Holders of the Contingent Convertible Capital Securities of such series will not be able to settle any transfers of any Contingent Convertible Capital Securities of such series following the Suspension Date, and any sale or other transfer of the Contingent Convertible Capital Securities of such series that a Holder of the Contingent Convertible Capital Securities of such series may have initiated prior to the Suspension Date that is scheduled to settle after the Suspension Date will be rejected by DTC and will not be settled through DTC. The Contingent Convertible Capital Securities of such series may cease to be admitted to trading on any stock exchange on which the Contingent Convertible Capital Securities of such series are then listed or admitted to trading after the Suspension Date.

(d) On the Suspension Date, the Company shall deliver a notice in accordance with Section 1.06 to the Trustee and to the Holders of the Contingent Convertible Capital Securities of the relevant series (a “**Settlement Request Notice**”) requesting that holders and beneficial owners of the Contingent Convertible Capital Securities of such series complete a notice to be delivered to the Paying and Conversion Agent, with a copy to the Trustee (a “**Delivery Notice**”). The Settlement Request Notice shall specify (i) the date by which the Delivery Notice must be received by the Paying and Conversion Agent (the “**Notice Cut-off Date**”) and (ii) the date on which the Contingent Convertible Capital Securities of such series in relation to which no Delivery Notice has been received by the Paying and Conversion Agent on or before the Notice Cut-off Date shall be cancelled, which will be no more than twelve Business Days after the Conversion Settlement Date (the “**Final Cancellation Date**”), as set forth in Section 4.07.

(e) In order to obtain delivery of the relevant Common Shares, or, if the Holder elects, ADSs, a Holder or beneficial owner must deliver its Contingent Convertible Capital Securities and Delivery Notice to the Paying and Conversion Agent (including, the delivery of such Contingent Convertible Capital Securities and Delivery Notice to the Paying and Conversion Agent through DTC) on or before the Notice Cut-off Date. If such delivery is made after the end of normal business hours at the specified office of the Paying and Conversion Agent, such delivery shall be deemed for all purposes to have been made or given on the following Business Day. The Delivery Notice shall contain: (i) the name of the Holder or beneficial owner of the applicable series of Contingent Convertible Capital Securities; (ii) the aggregate Liquidation Preference held by such Holder or beneficial owner of such series of Contingent Convertible Capital Securities on the date of such notice; (iii) the name in which the Common Shares or ADSs, as applicable, are to be registered, if applicable (iv) whether Common Shares or ADSs are to be delivered to the Holder or beneficial owner of such



series of Contingent Convertible Capital Securities; (v) the details of the DTC, Iberclear or other clearing system account (subject to the limitations set out below) to which the ADSs or Common Shares are to be credited, details of the registered account in our ADS facility if direct registration ADSs are to be issued, or, if the Common Shares are not a participating security in Iberclear or another clearing system, the address to which the Common Shares should be delivered; and (vi) such other details as may be required by the Paying and Conversion Agent.

(f) The Delivery Notice must be given and the Contingent Convertible Capital Securities Delivered in accordance with the applicable procedures of DTC (which may include the notice being given to the Paying and Conversion Agent by electronic means) and in a form acceptable to DTC and the Paying and Conversion Agent.

(g) Subject to satisfaction of the requirements and limitations set forth in this Section 4.06 and provided the Delivery Notice is delivered on or before the Notice Cut-off Date, the Paying and Conversion Agent shall give instructions to the Settlement Shares Depository that the Settlement Shares Depository shall deliver the relevant Common Shares (rounded down to the nearest whole number of Common Shares) to, or shall deposit such relevant Common Shares with the ADS Depository on behalf of, the Holder or beneficial owner of the relevant Contingent Convertible Capital Securities completing the relevant Delivery Notice or its nominee in accordance with the instructions given in such Delivery Notice on the applicable Conversion Settlement Date.

(h) Any Delivery Notice shall be irrevocable. Failure properly to complete and deliver a Delivery Notice and deliver the relevant Contingent Convertible Capital Securities may result in such Delivery Notice being treated as null and void and the Company shall be entitled to procure the sale of any applicable Common Shares to which the relevant holder may be entitled in accordance with Section 4.06. Any determination as to whether any Delivery Notice has been properly completed and delivered as provided in this Section 4.06 shall be made by the Company in its sole discretion, acting in good faith, and shall, in the absence of manifest error, be conclusive and binding on the relevant holders.

(i) A Holder of the Contingent Convertible Capital Securities of any series or Selling Agent (as defined in Section 4.07) must pay (in the case of the Selling Agent by means of deduction from the net proceeds of sale set forth in Section 4.07) any taxes and capital, stamp, issue and registration and transfer taxes or duties arising on Trigger Conversion (other than any taxes or capital, issue and registration and transfer taxes or stamp duties payable in Spain by the Company in respect of the issue and delivery of the Common Shares in accordance with a Delivery Notice delivered pursuant to this Contingent Convertible Capital Securities Indenture which shall be paid by the Company) and such holder or the Selling Agent (as the case may be) must pay (in the case of the Selling Agent, 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 Contingent Convertible Capital Security or interest therein.



(j) If the Company 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 Selling Agent, as the case may be, shall be entitled (but shall not be obliged) to tender and pay the same and the Company as a separate and independent obligation, undertakes to reimburse and indemnify each holder or Selling Agent, as the case may be, in respect of any payment thereof and any penalties payable in respect thereof.

(k) The Common Shares issued on Trigger Conversion will be fully paid and will in all respects rank *pari passu* with the fully paid Common Shares in issue on the Trigger Event Notice Date, except in any such case for any right excluded by mandatory provisions of applicable law and except that such Common Shares will not rank for (or, as the case may be, the relevant holder shall not be entitled to receive) any rights, dividends or payments the record date or other due date for the establishment of entitlement for which falls prior to the date that the resolution of issuance of the relevant Common Shares is approved.

Section 4.07. *Failure to Deliver a Delivery Notice.*

(a) If a duly completed Delivery Notice and the relevant Contingent Convertible Capital Securities are not delivered to a Paying and Conversion Agent as provided in this Contingent Convertible Capital Securities Indenture on or before the Notice Cut-off Date, then at any time following the Notice Cut-off Date and prior to the 10th Business Day after the Conversion Settlement Date, the Company may in its sole and absolute discretion (and the relevant Holders of such Contingent Convertible Capital Securities shall be deemed to agree thereto), elect to appoint a person (the "Selling Agent") to procure that all Common Shares held by the Settlement Shares Depository in respect of which the applicable Contingent Convertible Capital Securities and completed Delivery Notice have not been delivered on or before the Notice Cut-off Date as aforesaid shall be sold by or on behalf of the Selling Agent as soon as reasonably practicable.

(b) If the applicable Contingent Convertible Capital Securities and Delivery Notice are not delivered to the Paying and Conversion Agent on or before the Notice Cut-off Date, the Settlement Shares Depository shall continue to hold any Conversion Shares not sold by the Selling Agent until a Delivery Notice is so delivered or the Final Cancellation Date, whichever is earlier. However, any Holder or beneficial owner of the Contingent Convertible Capital Securities delivering a Delivery Notice after the Notice Cut-off Date will have to provide evidence of its entitlement to the relevant Common Shares, or if the holder elects, ADSs satisfactory to the Settlement Shares Depository in its sole and absolute discretion in order to receive delivery of such Common Shares or ADSs (if so elected to be deposited with the ADS Depository on its behalf).

(c) Subject to the deduction by or on behalf of the Selling Agent of any amount payable in respect of its liability to taxation and the payment of any capital, stamp, issue, registration and/or transfer taxes and duties (if any) and any fees or costs incurred by or on behalf of the Selling Agent in connection with the issue, allotment and sale thereof, and the conversion of any proceeds of such sale into U.S. dollars, the net



proceeds of such sale, converted into U.S. dollars at the Prevailing Rate on the Notice Cut-off Date, if necessary, shall as soon as reasonably practicable be distributed rateably to the relevant Holders in such manner and at such time as the Company shall determine and notify to the relevant Holders. Such payment shall for all purposes discharge the obligations of the Company, the Settlement Shares Depository, the Paying and Conversion Agent and the Selling Agent to such Holders in respect of the Trigger Conversion. The Company, the Settlement Shares Depository and the Selling Agent shall have no liability in respect of the exercise or non-exercise of any discretion or power pursuant to this Section 4.07 or in respect of any sale of any Common Shares, whether for the timing of any such sale or the price at or manner in which any such Common Shares are sold or the inability to sell any such Common Shares.

(d) If the Company does not appoint the Selling Agent by the 10th Business Day after the Conversion Settlement Date, or if any Common Shares are not sold by the Selling Agent in accordance with this Section 4.07, Common Shares for which a Delivery Notice has not been received will be cancelled on the Final Cancellation Date.

Section 4.08. *Delivery of ADSs*. In respect of any Conversion Shares that Holders elect to receive in the form of ADSs as specified in the Delivery Notice, the Settlement Shares Depository shall deposit with the custodian for the ADS Depository the number of Conversion Shares to be issued upon Trigger Conversion of the relevant series of Contingent Convertible Capital Securities, and the ADS Depository shall issue the corresponding number of ADSs to the DTC Participant account or registered ADS facility account specified by such Holders (per the ADS-to-ordinary share ratio in effect on the Conversion Settlement Date). However, the issuance of the ADSs by the ADS Depository may be delayed until the depository bank or the custodian receives confirmation that all required approvals have been given and that the Conversion Shares have been duly transferred to the custodian and that all applicable depository fees and payments have been paid to the ADS Depository.

**ARTICLE 5**  
**SATISFACTION AND DISCHARGE**

Section 5.01. *Satisfaction and Discharge of Contingent Convertible Capital Securities Indenture*. This Contingent Convertible Capital Securities Indenture shall upon Company Request cease to be of further effect with respect to the Contingent Convertible Capital Securities of any series (except as to any surviving rights of registration of transfer of the Contingent Convertible Capital Securities herein expressly provided for), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Contingent Convertible Capital Securities Indenture with respect to the Contingent Convertible Capital Securities of any series when:

(a) all Contingent Convertible Capital Securities of such series theretofore authenticated and delivered (other than Contingent Convertible Capital Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.06) have been delivered to the Trustee for cancellation;



200FX&=eN3snhFs4

(b) the Company has paid or caused to be paid all other sums payable hereunder (including Accrued Distributions, if any) by the Company with respect to the Contingent Convertible Capital Securities of such series; and

(c) the Company has delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Contingent Convertible Capital Securities Indenture with respect to the Contingent Convertible Capital Securities of such series have been complied with.

In addition, upon the exercise of a Bail-in Power with respect to a series of Contingent Convertible Capital Securities which results in the cancellation, or the conversion into other securities, of all the Liquidation Preference of, and Distributions on such Contingent Convertible Capital Securities or such Contingent Convertible Capital Securities otherwise ceasing to be outstanding, this Contingent Convertible Capital Securities Indenture shall be satisfied and discharged as to such series.

Notwithstanding any satisfaction and discharge of this Contingent Convertible Capital Securities Indenture, the obligations of the Company to the Trustee under Section 7.08 of this Contingent Convertible Capital Securities Indenture, the obligations of the Trustee to any Authenticating Agent under Section 7.15 of this Contingent Convertible Capital Securities Indenture and the obligations of the Trustee under Section 5.02 of this Contingent Convertible Capital Securities Indenture and the last paragraph of Section 11.03 of this Contingent Convertible Capital Securities Indenture shall survive such satisfaction and discharge.

*Section 5.02. Application of Trust Money.* Subject to the provisions of the last paragraph of Section 11.03, all cash deposited with the Trustee pursuant to Section 5.01 shall be held in trust and such cash shall be applied by it, in accordance with the provisions of the Contingent Convertible Capital Securities of such series and this Contingent Convertible Capital Securities Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the Liquidation Preference and accrued but unpaid Distributions, if any, for the payment of which such cash has been deposited with the Trustee.

*Section 5.03. Repayment to Company.* The Trustee, the Calculation Agent and any Paying Agent promptly shall pay to the Company upon Company Request any excess money held by them at any time with respect to any series of Contingent Convertible Capital Securities.

*Section 5.04. Reinstatement.* If the Trustee or any Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article 5 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Contingent Convertible Capital Securities Indenture, the Contingent Convertible Capital Securities shall be revived and reinstated



as though no deposit had occurred pursuant to this Article 5 until such time as the Trustee or such Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article 5; provided, however, that, if the Company has made any payment of Liquidation Preference of or Distributions on any Contingent Convertible Capital Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Contingent Convertible Capital Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or such Paying Agent.

ARTICLE 6  
REMEDIES

Section 6.01. *Enforcement Events.*

(a) Each of the following events is an “Enforcement Event” with respect to any series of Contingent Convertible Capital Securities:

- (i) non-payment of Redemption Price on such series when due as set forth in Section 12.04;
- (ii) the breach of any term, obligation or condition binding on the Company under the Contingent Convertible Capital Securities of such series (other than any of the Company’s payment obligations under or arising from the Contingent Convertible Capital Securities of such series, including payment of any Liquidation Preference or Distributions, including any damages awarded for breach of any obligations) (a “**Performance Obligation**”); or
- (iii) the occurrence of any voluntary or involuntary liquidation of the Company (a “**Liquidation Event**”) prior to the occurrence of a Trigger Event.

(b) Neither a cancellation of Contingent Convertible Capital Securities of any series, a reduction, in part or in full, of the Amounts Due on Contingent Convertible Capital Securities of any series, the conversion thereof into another security or obligation of the Company or another person, in each case as a result of the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Company, nor the exercise of any Bail-on Power or any other resolution power by the Relevant Resolution Authority with respect to such Contingent Convertible Capital Securities will be an Enforcement Event or otherwise constitute non-performance of a contractual obligation, or entitle the holders of such securities to any remedies, which are hereby expressly waived.

(c) In addition, the Trigger Conversion will not constitute an Enforcement Event or the occurrence of any event related to the insolvency of the Company or entitle Holders to take any action to cause the liquidation, dissolution or winding up of the Company.



Section 6.02. *Liquidation Distribution.* (a) Subject as provided in Section 6.02(b) below, in the event of any Liquidation Event, Holders of the Contingent Convertible Capital Securities of any series (unless previously converted into Common Shares pursuant to Section 4.01) shall be entitled to receive out of the assets of the Company available for distribution to Holders of such series, the Liquidation Distribution. Such entitlement will arise before any distribution of assets is made to Holders of Common Shares or any other instrument of the Company ranking junior to the Contingent Convertible Capital Securities of such series.

(b) If, before the occurrence of a Liquidation Event, the Trigger Event occurs but the relevant conversion of the Contingent Convertible Capital Securities of such series into Common Shares pursuant to Section 4.01 is still to take place, Holders of the Contingent convertible Capital Securities of such series will be entitled to receive out of the relevant assets of the Company a monetary amount equal to that which holders of such Contingent Convertible Capital Securities of such series would have received on any distribution of the assets of the Company if such conversion had taken place immediately prior to such liquidation.

(c) After payment of the relevant entitlement in respect of a Contingent Convertible Capital Security as described in this Section 6.02, such Contingent Convertible Capital Security will confer no further right or claim to any of the remaining assets of the Company.

Section 6.03. *Limitation of Remedies Upon an Enforcement Event.*

The sole remedies of the holders of the Contingent Convertible Capital Securities of a series and the Trustee under the Contingent Convertible Capital Securities of such series upon the occurrence of an Enforcement Event shall be:

(a) to seek enforcement of the Company's obligation to pay the Redemption Price of the securities of such series if not paid within 14 days of the date fixed for redemption (provided that the applicable conditions described under Section 12.04 shall have been satisfied);

(b) to seek enforcement of a Performance Obligation; and

(c) to enforce the entitlement set forth in Section 6.02.

The foregoing shall not prevent the holders of the Contingent Convertible Capital Securities of such series or the trustee from instituting proceedings for the bankruptcy of Banco Santander.

Section 6.04. *No Other Remedies and Other Terms.*

(a) Other than the limited remedies specified in this Article 6, and subject to paragraph (c) below, no remedy against the Company shall be available to the Trustee (acting on behalf of the Holders) or to the Holders of the Contingent Convertible Capital Securities of any series, whether for the recovery of amounts owing in respect of such





Contingent Convertible Capital Securities Indenture, or in respect of any breach by the Company of any of the Company's obligations under or in respect of the terms of such Contingent Convertible Capital Securities in relation thereto; provided, however, that the Company's obligations to the Trustee under, and the Trustee's lien provided for in Section 7.08 of the Contingent Convertible Securities Indenture and the Trustee's rights to have money collected applied first to pay amounts due to it under such Section pursuant to Section 6.08 of the Contingent Convertible Securities Indenture shall not be limited or impaired by this Article 6 or otherwise and expressly survive any Enforcement Event and are not subject to the subordination provisions of Section 13.01.

(b) Notwithstanding the limitations on remedies specified in this Article 6, (i) the Trustee shall have such powers as are required to be authorized to it under the Trust Indenture Act in respect of the rights of the Holders under the provisions of this Contingent Convertible Capital Securities Indenture, and (ii) nothing shall impair the right of a Holder of the Contingent Convertible Capital Securities under the Trust Indenture Act, absent such Holder's consent, to sue for any payment due but unpaid with respect to the Contingent Convertible Capital Securities as provided for in Section 6.10; provided that, in the case of (i) and (ii) above, any payments in respect of, or arising from, the Contingent Convertible Capital Securities, including any payments or amounts resulting or arising from the enforcement of any rights under the Trust Indenture Act in respect of the Contingent Convertible Capital Securities, shall be subject to the subordination provisions set forth in Section 13.01.

(c) In furtherance of Section 7.01 of this Contingent Convertible Capital Securities Indenture:

(i) For purposes of Sections 315(a) and 315(c) of the Trust Indenture Act, the term "default" is hereby defined to mean an Enforcement Event which has occurred and is continuing.

(ii) Notwithstanding anything contained in this Contingent Convertible Capital Securities Indenture to the contrary, the duties and responsibilities of the Trustee under this Contingent Convertible Capital Securities Indenture shall be subject to the protections, exculpations and limitations on liability afforded to an indenture trustee under the provisions of the Trust Indenture Act.

Section 6.05. *Agreement with Respect to Limitation of Remedies for Breach of a Performance Obligation.* By its acquisition of the Contingent Convertible Capital Securities of any series, each Holder and beneficial owner of the Contingent Convertible Capital Securities of such series acknowledges and agrees that such Holder and beneficial owner will not seek, and will not direct the Trustee to seek, a claim for damages against the Company in respect of a breach by the Company of a Performance Obligation and that the sole and exclusive remedy that such Holder and the Trustee may seek under the Contingent Convertible Capital Securities of such series and this Contingent Convertible Capital Securities Indenture for a breach by the Company of a Performance Obligation is specific performance.



Section 6.06. *Trustee May File Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition, winding-up or other judicial proceeding relative to the Company or any other obligor upon the Contingent Convertible Capital Securities of any series or to the property of the Company or such other obligor or their creditors (other than under or in connection with a scheme of amalgamation or reconstruction not involving bankruptcy or insolvency), the Trustee (irrespective of whether the Liquidation Preference of the Contingent Convertible Capital Securities of such series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue Liquidation Preference or Distributions) shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding; provided that the Company shall not, as a result of the bringing of such proceedings, be obliged to pay any sum representing or measured by reference to Liquidation Preference or Distributions on the Contingent Convertible Capital Securities sooner than the same would otherwise have been payable by it. In particular, the Trustee shall be authorized to collect and receive any moneys and other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder of a Contingent Convertible Capital Security to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to such Holders or holders, to first pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due to the Trustee under Section 7.08.

Subject to Article 9 and Section 10.02, nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of any Contingent Convertible Capital Security any plan of reorganization, arrangement, adjustment, or composition affecting any Contingent Convertible Capital Securities or the rights of any Holder of any Contingent Convertible Capital Security or to authorize the Trustee to vote in respect of the claim of any such Holder in any such proceeding.

The provisions of this Section 6.06 are subject to the provisions of Section 13.01.

Section 6.07. *Trustee May Enforce Claims Without Possession of Contingent Convertible Capital Securities.* All rights of action and claims under this Contingent Convertible Capital Securities Indenture or the Contingent Convertible Capital Securities, if any, may be prosecuted and enforced by the Trustee without the possession of any of the Contingent Convertible Capital Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel (subject, with regard to the Company, to the provisions of Article 13) be for the ratable benefit of the Holders of the Contingent Convertible Capital Securities in respect of which such judgment has been recovered.



Section 6.08. *Application of Money Collected.* Any money collected by the Trustee pursuant to this Article or, after an Enforcement Event, any money or other property distributable in respect of the Company's obligations under this Contingent Convertible Capital Securities Indenture, in respect of any series of Contingent Convertible Capital Securities shall, subject to the provisions of Section 13.02 in relation to waiver of set-off and to Section 13.01 in relation to the subordination of the Contingent Convertible Capital Securities, be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of Liquidation Preference or Distributions upon presentation of such Contingent Convertible Capital Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts applicable to such series of Contingent Convertible Capital Securities in respect of which or for the benefit of which such money has been collected and due and owing to the Trustee (including any predecessor Trustee) under Section 7.08;

SECOND: To the payment of the amounts then due and unpaid for Liquidation Preference of and Distributions on such series of Contingent Convertible Capital Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Contingent Convertible Capital Securities for Liquidation Preference and Distributions, if any, respectively; and

THIRD: To the payment of the balance, if any, to the Company.

Section 6.09. *Limitation on Suits.* No Holder of any Contingent Convertible Capital Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Contingent Convertible Capital Securities Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

(a) such Holder has previously given written notice to the Trustee of a continuing Enforcement Event with respect to Contingent Convertible Capital Securities of the same series specifying such Enforcement Event and stating that such notice is a "Notice of Enforcement Event" hereunder;

(b) the Holders of not less than 25% in aggregate Liquidation Preference of the Outstanding Contingent Convertible Capital Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Enforcement Event in its own name, as Trustee hereunder;

(c) such Holder of a Contingent Convertible Capital Security has offered to the Trustee reasonable indemnity satisfactory to it (as determined by the Trustee in its sole discretion) against the costs, expenses and liabilities to be incurred in compliance with such request;



(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in Liquidation Preference of the Outstanding Contingent Convertible Capital Securities of such series;

it being understood and intended that no one or more Holders of Contingent Convertible Capital Securities of a particular series shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Contingent Convertible Capital Securities Indenture to affect, disturb or prejudice the rights of any other such Holders or holders, or to obtain or to seek to obtain priority or preference over any other such Holders or holders or to enforce any right under this Contingent Convertible Capital Securities Indenture, except in the manner herein provided and for the equal and ratable benefit of all Holders of Contingent Convertible Capital Securities of such series.

Section 6.10. *Unconditional Right of Holders to Receive Liquidation Preference and Distributions.* Notwithstanding any other provision in this Contingent Convertible Capital Securities Indenture, and subject to Article 13 in relation to the subordination of the Contingent Convertible Capital Securities of any series, the Holder of any Contingent Convertible Capital Security shall have the right, which is absolute and unconditional, to receive payment of the Liquidation Preference of and any Distribution on such Contingent Convertible Capital Security when due and payable in accordance with the provisions of this Contingent Convertible Capital Securities Indenture (including Article 3 and Article 14 hereof) and as expressed in such Contingent Convertible Capital Security (or, in the case of redemption, on the Redemption Date, as the case may be) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 6.11. *Restoration of Rights and Remedies.* If the Trustee or any Holder of any Contingent Convertible Capital Security has instituted any proceeding to enforce any right or remedy under this Contingent Convertible Capital Securities Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders of Contingent Convertible Capital Securities shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders of Contingent Convertible Capital Securities shall continue as though no such proceeding had been instituted.

Section 6.12. *Rights and Remedies Cumulative.* Subject to the limitations on remedies provided for in this Article 6, except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Contingent Convertible Capital Securities in the last paragraph of Section 3.06, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Contingent Convertible Capital Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to



200FX&=8eN3o9sYL9

every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.13. *Delay or Omission Not Waiver.* No delay or omission of the Trustee or of any Holder of any Contingent Convertible Capital Security to exercise any right or remedy accruing upon any Enforcement Event shall impair any such right or remedy or constitute a waiver of any such Enforcement Event or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders of Contingent Convertible Capital Securities may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders of Contingent Convertible Capital Securities.

Section 6.14. *Control by Holders.* The Holders of a majority in aggregate Liquidation Preference of the Outstanding Contingent Convertible Capital Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee with respect to the Contingent Convertible Capital Securities of such series, provided that

(a) such direction shall not be in conflict with any rule of law or with this Contingent Convertible Capital Securities Indenture or with the Contingent Convertible Capital Securities of any series;

(b) the Trustee shall not determine that the action so directed would be unjustly prejudicial to the Holders of any Contingent Convertible Capital Securities of any series not taking part in such direction with respect to which the Trustee is acting as the Trustee; and

(c) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Section 6.15. *Undertaking for Costs.* All parties to this Contingent Convertible Capital Securities Indenture agree, and each Holder of any Contingent Convertible Capital Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Contingent Convertible Capital Securities Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant to such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder or group of Holders holding in the aggregate more than 10% in Liquidation Preference of the Outstanding Contingent Convertible Capital Securities of any series, or to any suit instituted by any Holder for the enforcement of the payment of the Liquidation



Preference of or Distributions on any Contingent Convertible Capital Security on or after the dates upon which such Distributions become due and payable pursuant to the terms hereof or the terms expressed in such Contingent Convertible Capital Security (or, in the case of redemption on or after the Redemption Date).

Section 6.16. *Waiver of Past Enforcement Events.* (a) Holders of not less than a majority in aggregate Liquidation Preference of the Outstanding Contingent Convertible Capital Securities may on behalf of the Holders of all of the Contingent Convertible Capital Securities waive any past Enforcement Event that results from a breach by the Company of a Performance Obligation. Holders of a majority of the aggregate Liquidation Preference of the Outstanding Contingent Convertible Capital Securities shall not be entitled to waive (i) any past Enforcement Event that results from a Liquidation Event and (ii) any Enforcement Event in respect of a covenant or provision hereof which under Article 10 cannot be modified or amended without the consent of the Holder of each Outstanding Contingent Convertible Capital Security of such series affected.

(b) Upon the occurrence of any waiver permitted by paragraph (a) above, such Enforcement Event shall cease to exist, and any Enforcement Event with respect to this Contingent Convertible Capital Securities arising therefrom shall be deemed to have been cured and not to have occurred for every purpose of the Contingent Convertible Capital Securities Indenture, but no such waiver shall extend to any subsequent or other Enforcement Event or impair any right consequent thereon.

ARTICLE 7  
THE TRUSTEE

Section 7.01. *Certain Duties and Responsibilities.*

(a) Except during the continuance of an Enforcement Event,

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Contingent Convertible Capital Securities Indenture, and no implied covenants or obligations shall be read into this Contingent Convertible Capital Securities Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Contingent Convertible Capital Securities Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Contingent Convertible Capital Securities Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts, statements, opinions or conclusions stated therein).



(b) In case an Enforcement Event has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Contingent Convertible Capital Securities Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(c) No provision of this Contingent Convertible Capital Securities Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(i) this Section 7.01(c) shall not be construed to limit the effect of subsections (a) or (d) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in Liquidation Preference of the Outstanding Contingent Convertible Capital Securities of any series, determined as provided herein, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Contingent Convertible Capital Securities Indenture with respect to the Contingent Convertible Capital Securities of such series;

(d) No provision of this Contingent Convertible Capital Securities Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it; and

(e) Whether or not therein expressly so provided, every provision of this Contingent Convertible Capital Securities Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

*Section 7.02. Spanish Tax Procedures and Obligations of the Trustee.* In connection with each payment made on any Payment Date (as defined in Appendix 1 attached hereto) in respect of the issued Contingent Convertible Capital Securities hereunder, the Trustee or Paying Agent shall comply with the tax procedures set forth in Appendix 1 hereto. The Trustee or Paying Agent shall have no duty or responsibility to comply with other Spanish tax obligations arising out of this Contingent Convertible Capital Securities Indenture. The Company shall be responsible for the payment of any and all amounts due under the Contingent Convertible Capital Securities. Therefore, the Trustee or Paying Agent shall not be liable for any amounts owed to any person due to its



200FX&=8eN3oLd%\$)

failure to properly comply with the tax procedures referred to in this Section 7.02 and Appendix 1 hereto, except such as may result from the negligence, willful misconduct or fraud of the Trustee or Paying Agent or any of its agents or employees. The Trustee or Paying Agent may request and rely conclusively upon any instructions from the Company in respect of any action necessary or required to be taken by the Trustee or Paying Agent pursuant to this Section 7.02 and Appendix 1 hereto; provided, however, that in no event shall the Trustee or Paying Agent be required to expend or risk its own funds in the performance of any of its duties pursuant to this Section 7.02 and Appendix 1 hereto, or be obligated to take any legal or other action which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with acceptable indemnification and security.

Section 7.03. *Notice of Enforcement Events.* Within 90 days after the occurrence of any Enforcement Event hereunder with respect to Contingent Convertible Capital Securities of any series of which a Responsible Officer of the Trustee has received written notice the Trustee shall transmit in the manner and to the extent provided in Section 1.06 to Holders of Contingent Convertible Capital Securities of such series notice of such Enforcement Event hereunder of which the Trustee has received written notice, unless such Enforcement Event shall have been cured or waived; provided, however, that, the Trustee shall be protected in withholding such notice if it determines in good faith that the withholding of such notice is in the interest of the Holders of Contingent Convertible Capital Securities of such series.

Section 7.04. *Certain Rights of Trustee.* Subject to the provisions of Section 7.01:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, Officer's Certificate, or any other certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other evidence of indebtedness or other paper or document (whether in its original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors of the Company may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Contingent Convertible Capital Securities Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate and/or an Opinion of Counsel;

(d) the Trustee may consult with counsel of its own selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;





200FX&=eN3oPGyLu

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Contingent Convertible Capital Securities Indenture at the request or direction of any of the Holders pursuant to this Contingent Convertible Capital Securities Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole reasonable cost and expense of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation; provided that the Trustee shall not be entitled to such information which the Company is prevented from disclosing as a matter of law or contract;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(h) the Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Contingent Convertible Capital Securities Indenture, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(i) anything in this Contingent Convertible Capital Securities Indenture notwithstanding, in no event shall the Trustee be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to loss or profit), even if the Trustee has been advised as to the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in negligence or otherwise;

(j) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Contingent Convertible Capital Securities Indenture, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;



(k) the Trustee shall not be deemed to have notice of any Enforcement Event unless a Responsible Officer of the Trustee has received, at the Corporate Trust Office of the Trustee, written notice of such an Enforcement Event and such notice references the Contingent Convertible Capital Securities and/or this Contingent Convertible Capital Securities Indenture;

(l) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(m) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Contingent Convertible Capital Securities Indenture, which certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded; and

(n) the Trustee shall not be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, strikes, work stoppages, civil or military disturbances, nuclear or natural catastrophes, fire, riot, embargo, loss or malfunctions of utilities, communications or computer (software and hardware) services, government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Contingent Convertible Capital Securities Indenture.

*Section 7.05. Not Responsible for Recitals or Issuance of Contingent Convertible Capital Securities.* The recitals contained herein and in the Contingent Convertible Capital Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Contingent Convertible Capital Securities Indenture or of the Contingent Convertible Capital Securities, except that the Trustee represents and warrants that it has duly authorized, executed and delivered this Contingent Convertible Capital Securities Indenture. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of Contingent Convertible Capital Securities or the proceeds thereof. The Trustee shall not be responsible to make any calculation with respect to any matter under this Contingent Convertible Capital Securities Indenture other than as specifically provided for herein. The Trustee shall have no duty to monitor or investigate the Company's compliance with or the breach of, or cause to be performed or observed, any representation, warranty, or covenant, or agreement of any Person, other than the Trustee, made in this Contingent Convertible Capital Securities Indenture

No provision of this Contingent Convertible Capital Securities Indenture shall be deemed to impose any duty or obligation on the Trustee to perform any act or acts,



200FX&=8eN3oV\$5s

receive or obtain any interest in property or exercise any interest in property, or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, taxation or other consequences that, in the sole determination of the Trustee, are adverse to the Trustee, or in which the Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, to receive or obtain any such interest in property or to exercise any such right, power, duty or obligation.

Section 7.06. *May Hold Contingent Convertible Capital Securities.* The Trustee, any Authenticating Agent, any Paying Agent, any Contingent Convertible Capital Security Registrar and any Calculation Agent or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Contingent Convertible Capital Securities and, subject to Section 7.11 and Section 7.15, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Contingent Convertible Capital Security Registrar, Calculation Agent or such other agent.

Section 7.07. *Money Held in Trust.* Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

Section 7.08. *Compensation and Reimbursement.* The Company agrees

(a) to pay to the Trustee from time to time compensation for all services rendered by it hereunder as agreed upon in writing by the Company from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, to reimburse the Trustee for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Contingent Convertible Capital Securities Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as shall be determined by a court of competent jurisdiction to have been caused by its own negligence or bad faith; and

(c) to indemnify the Trustee (which for purposes of this subsection (c) shall be deemed to include its directors, officers, employees and agents) or any predecessor Trustee for, and to hold it harmless against, any and all loss, liability, claim, damage or expense (including legal fees and expenses) and taxes (other than taxes based upon, measured by or determined by the income of the Trustee) incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder including the costs and expenses of defending itself against any claim (whether asserted by the Company, or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, or in connection with enforcing the provisions of this Section, but excluding any tax liabilities of the Trustee in respect of its income.



200FX&=8eN3oYh&LE

In addition to, but without prejudice to its other rights under this Contingent Convertible Capital Securities Indenture, when the Trustee incurs expenses or renders services in connection with an Enforcement Event specified in Section 6.01, the fees, costs and expenses (including the charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law.

The Trustee shall notify the Company in writing of the commencement of any action or claim in respect of which indemnification may be sought promptly after a Responsible Officer of the Trustee becomes aware of such commencement (provided that the failure to make such notification shall not affect the Trustee’s rights hereunder) and the Company shall be entitled to participate in, and to the extent it shall wish, to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Trustee. If the Company and the Trustee are being represented by the same counsel and the Company has assumed the defense of the claim, the Trustee shall not be authorized to settle a claim without the written consent of the Company, which consent shall not be unreasonably withheld.

As security for the performance of the obligations of the Company under this Section, the Trustee shall have a senior lien to which the Contingent Convertible Capital Securities are hereby made subordinate, upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of Liquidation Preference or Distributions on the Contingent Convertible Capital Securities.

“Trustee” for purposes of this Section shall include any predecessor Trustee; provided, however, that the negligence, willful misconduct or bad faith of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

The Trustee’s rights to payment of its fees, reimbursement and indemnity under, and its lien provided for in, this Section 7.08 shall survive the payment in full of the Contingent Convertible Capital Securities, the satisfaction and discharge of this Contingent Convertible Capital Securities Indenture, the resignation or removal of the Trustee, the termination for any reason of this Contingent Convertible Capital Securities Indenture and the exercise of the Bail-in Power and the other relevant resolution tools by the Relevant Resolution Authority.

Section 7.09. *Disqualification; Conflicting Interests.* If the Trustee has or shall acquire a conflicting interest within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, Section 310(b) of the Trust Indenture Act and this Contingent Convertible Capital Securities Indenture.

Section 7.10. *Corporate Trustee Required; Eligibility.* There shall at all times be a Trustee hereunder with respect to each series which shall be a Person organized and



doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal or State or District of Columbia authority and having a corporate trust office or agency in the Borough of Manhattan, The City of New York, New York. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article 7.

*Section 7.11. Resignation and Removal; Appointment of Successor.*

- (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 7.12.
- (b) The Trustee may resign at any time with respect to the Contingent Convertible Capital Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 7.12 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Contingent Convertible Capital Securities of such series.
- (c) The Trustee may be removed at any time with respect to the Contingent Convertible Capital Securities of any series by Act of the Holders of a majority in Liquidation Preference of the Outstanding Contingent Convertible Capital Securities of such series delivered to the Trustee and to the Company. If the instrument of acceptance by a successor Trustee required by Section 7.12 shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the Trustee may petition at the expense of the Company any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Contingent Convertible Capital Securities of such series.
- (d) If at any time:
  - (i) the Trustee shall fail to comply with Section 7.09 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Contingent Convertible Capital Security of the series as to which the Trustee has a conflicting interest for at least six months, or
  - (ii) the Trustee shall cease to be eligible under Section 7.10 and shall fail to resign after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Contingent Convertible Capital Security for at least six months, or



200FX&=8eN465rPLn

(iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge, or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, or

(iv) the Trustee shall fail to perform its obligations to the Company under this Contingent Convertible Capital Securities Indenture in any material respect,

then, in any such case, (i) the Company by a Board Resolution may remove the Trustee with respect to any or all series of Contingent Convertible Capital Securities or (ii) subject to Section 6.15 (and except in the case of subparagraph (d)(iv) above), any Holder who has been a bona fide Holder of a Contingent Convertible Capital Security for at least six months (and, in the case of (i) above, who is a Holder of a Contingent Convertible Capital Security of the series as to which the Trustee has a conflicting interest) may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Contingent Convertible Capital Securities and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Contingent Convertible Capital Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Contingent Convertible Capital Securities of such series (it being understood that any successor Trustee may be appointed with respect to the Contingent Convertible Capital Securities of one or more or all of such series and at any time there shall be only one Trustee with respect to the Contingent Convertible Capital Securities of any particular series), and shall comply with the applicable requirements of Section 7.12. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Contingent Convertible Capital Securities of any series shall be appointed by Act of the Holders of a majority in Liquidation Preference of the Outstanding Contingent Convertible Capital Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 7.12, become the successor Trustee with respect to the Contingent Convertible Capital Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Contingent Convertible Capital Securities of any series shall have been so appointed by the Company or the Holders of Contingent Convertible Capital Securities of such series and accepted appointment in the manner hereinafter required by Section 7.12, any Holder who has been a bona fide Holder of a Contingent Convertible Capital Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Contingent Convertible Capital Securities of such series.



(f) The Company shall give notice to Holders of each resignation and each removal of the Trustee with respect to the Contingent Convertible Capital Securities of any series and each appointment of a successor Trustee with respect to the Contingent Convertible Capital Securities of any series to the Holders in the manner and to the extent provided in Section 1.06. Each notice shall include the name of the successor Trustee with respect to the Contingent Convertible Capital Securities of such series and the address of its Corporate Trust Office.

*Section 7.12. Acceptance of Appointment by Successor.*

(a) In case of the appointment hereunder of a successor Trustee with respect to all Contingent Convertible Capital Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges and subject to its lien provided for in Section 7.08, execute and deliver an instrument transferring to such successor Trustee, all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Contingent Convertible Capital Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Contingent Convertible Capital Securities of such series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Contingent Convertible Capital Securities of such series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Contingent Convertible Capital Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Contingent Convertible Capital Securities of such series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Contingent Convertible Capital Securities Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Contingent



Convertible Capital Securities of such series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Contingent Convertible Capital Securities of such series to which the appointment of such successor Trustee relates, subject to the lien provided for in Section 7.08.

(c) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (a) or (b) of this Section, as the case may be.

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article 7.

Section 7.13. *Merger, Conversion, Consolidation or Succession to Business.* Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such Person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Contingent Convertible Capital Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Contingent Convertible Capital Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Contingent Convertible Capital Securities.

Section 7.14. *Preferential Collection of Claims.* If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Contingent Convertible Capital Securities of a series), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

Section 7.15. *Appointment of Authenticating Agent.* The Trustee may at any time appoint an Authenticating Agent or Agents with respect to one or more series of Contingent Convertible Capital Securities which shall be authorized to act on behalf of the Trustee to authenticate Contingent Convertible Capital Securities of such series upon original issue, or issued upon exchange, registration of transfer or partial redemption thereof or in lieu of destroyed, lost or stolen Contingent Convertible Capital Securities, and Contingent Convertible Capital Securities so authenticated shall be entitled to the benefits of this Contingent Convertible Capital Securities Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Contingent Convertible Capital Securities Indenture to the authentication and delivery of Contingent Convertible Capital Securities by the Trustee





or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation or national banking association organized and doing business under the laws of the United States, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or State or District of Columbia authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any Person into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Person succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such Person shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall give notice to the Holders of Contingent Convertible Capital Securities in the manner and to the extent provided in Section 1.06. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 7.15.

If an appointment with respect to one or more series is made pursuant to this Section, the Contingent Convertible Capital Securities of such series may have endorsed thereon, in lieu of the Trustee's certificate of authentication, an alternate certificate of authentication in substantively the following form:



This is one of the Contingent Convertible Capital Securities referred to in the within-mentioned Contingent Convertible Capital Securities Indenture.

THE BANK OF NEW YORK MELLON, as Trustee

By: \_\_\_\_\_  
as Authenticating Agent

By: \_\_\_\_\_  
Authorized Signatory

Section 7.16. *Appointment of Additional Trustees.* The Company may appoint a Trustee for a particular series of Contingent Convertible Capital Securities other than the Trustee named in the first paragraph of this Contingent Convertible Capital Securities Indenture by executing and delivering an indenture supplemental hereto where such Trustee accepts such appointment as contemplated by Section 10.01(l) (it being understood that at any time there shall be only one Trustee with respect to the Contingent Convertible Capital Securities of any particular series); provided that, at the time of such acceptance, such Trustee shall be qualified and eligible under this Article 6. Upon such acceptance, such Trustee shall be vested with all the rights, powers, trusts and duties of a Trustee under this Contingent Convertible Capital Securities Indenture with respect to the Contingent Convertible Capital Securities of such series.

Section 7.17. *Tax Withholding.* Any amounts to be paid by the Company on the Contingent Convertible Capital Securities shall be paid net of any deduction or withholding imposed or required pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (or any law implementing such an intergovernmental agreement) (a “**FATCA Withholding Tax**”), and the Company shall not be required to pay Additional Amounts on account of any FATCA Withholding Tax.

Any Paying Agent shall be entitled to make a deduction or withholding from any payment which it makes under the Contingent Convertible Capital Securities and this Contingent Convertible Capital Securities Indenture for or on account of (i) any present or future taxes, duties or charges if and to the extent so required by any applicable law and (ii) any FATCA Withholding Tax (together, “**Applicable Law**”). In either case, the Paying Agent shall make any payment after a deduction or withholding has been made pursuant to Applicable Law and shall report to the relevant authorities the amount so deducted or withheld. In all cases, the Paying Agent shall have no obligation to gross up any payment made subject to any deduction or withholding pursuant to Applicable Law. In addition, amounts deducted or withheld by the Paying Agent as described in this



paragraph will be treated as paid to the Holder of the Contingent Convertible Capital Securities, and the Company will not pay Additional Amounts in respect of such deduction or withholding, except to the extent required under Section 11.04.

**ARTICLE 8**  
HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 8.01. *Company to Furnish Trustee Names and Addresses of Holders.* The Company, with respect to any series of Contingent Convertible Capital Securities, will furnish or cause to be furnished to the Trustee

(a) not more than 15 days after each Regular Record Date (or after each of the dates to be specified for such purpose for non-Distribution bearing Contingent Convertible Capital Securities and Contingent Convertible Capital Securities on which Distribution Dates occur less frequently than quarterly as contemplated by Section 3.01), a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Contingent Convertible Capital Securities as of such Regular Record Date or such specified date, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished.

The Company need not furnish or cause to be furnished to the Trustee pursuant to this Section 8.01 the names and addresses of Holders of Contingent Convertible Capital Securities so long as the Trustee acts as Contingent Convertible Capital Security Registrar with respect to such series of Contingent Convertible Capital Securities.

Section 8.02. *Preservation of Information; Communication to Holders.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders (i) contained in the most recent list furnished to the Trustee as provided in Section 8.01 and (ii) received by the Trustee in its capacity as Paying Agent or Contingent Convertible Capital Security Registrar (if so acting). The Trustee may dispose of any list furnished to it as provided in Section 8.01 upon receipt of a new list so furnished.

(b) The rights of the Holders of Contingent Convertible Capital Securities of any series to communicate with other Holders with respect to their rights under this Contingent Convertible Capital Securities Indenture or under the Contingent Convertible Capital Securities, and the corresponding rights and privileges of the Trustee, shall be as provided by the Trust Indenture Act.

(c) Every Holder, by receiving and holding a Contingent Convertible Capital Security, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of any of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with Section 8.02(b) or otherwise made pursuant to the Trust Indenture Act.



200FX&=&eN3omydL7

Section 8.03. *Reports by Trustee.*

(a) On or before May 15 in each year following the date hereof, so long as any Contingent Convertible Capital Securities are Outstanding hereunder, the Trustee shall transmit to Holders as provided in the Trust Indenture Act a brief report dated as of a date required by and in compliance with the Trust Indenture Act.

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each securities exchange upon which the Trustee has been notified that the Contingent Convertible Capital Securities are listed, with the Commission and with the Company. The Company will notify the Trustee when Contingent Convertible Capital Securities are listed on any securities exchange.

(c) The Trustee may conclusively presume that the Company is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise is complying with such reporting requirements unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office of the Trustee a written notification from the Company stating otherwise. The Trustee shall have no duty to examine any information, reports or other documents filed by the Company pursuant to Section 13 or 15(d) of the Exchange Act, and need make no determination as to whether they comply with the requirements of Section 8.04, its sole duty in respect thereof being to place them in its files and make them available for inspection by any Holder upon reasonable request during normal business hours.

Section 8.04. *Reports by Company.*

The Company shall:

(a) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of such Sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate);



(b) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Contingent Convertible Capital Securities Indenture as may be required from time to time by such rules and regulations. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate); and

(c) transmit to Holders, in the manner and to the extent required by the Trust Indenture Act, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs 8.04(a) and 8.04(b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

**ARTICLE 9**  
CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER

*Section 9.01. Company May Consolidate, Etc., Only on Certain Terms.*

The Company may, without the consent of Holders of any Contingent Convertible Capital Securities of any series Outstanding under this Contingent Convertible Capital Securities Indenture, consolidate or amalgamate with or merge into any other corporation or convey or transfer or lease its properties and assets substantially as an entirety to any Person, provided that:

(a) any successor corporation formed by any consolidation, amalgamation or merger, or any transferee or lessee of the Company's assets, (i) shall be a company organized and existing under the laws of any part of the European Union, and (ii) shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in the case of the Company, in form satisfactory to the Trustee, the due and punctual payment of the Liquidation Preference and Distributions and Additional Amounts, if any, on all the Contingent Convertible Capital Securities in accordance with the provisions of such Contingent Convertible Capital Securities and this Contingent Convertible Capital Securities Indenture and the performance of every covenant of this Capital Indenture on the part of the Company to be performed or observed;

(b) immediately after giving effect to such consolidation, amalgamation, merger, conveyance or transfer, no Enforcement Event and no event which, after notice or lapse of time or both, would become an Enforcement Event, shall have occurred and be continuing; and



(c) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger, conveyance or transfer and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 9.02. *Successor Corporation Substituted.* In the event of any merger, consolidation, sale, conveyance permitted by Section 9.01 above, Additional Amounts under the Contingent Convertible Capital Securities will thereafter be payable in respect of taxes imposed by the acquiring corporation's, or the resulting corporation's, jurisdiction of incorporation or tax residence (subject to exceptions equivalent to those that apply to the obligation to pay Additional Amounts pursuant to Section 11.04 in respect of taxes imposed by the laws of the Kingdom of Spain) rather than taxes imposed by the Kingdom of Spain. Additional Amounts with respect to payments of Distributions due prior to the date of such merger, consolidation, sale, conveyance or lease will be payable only in respect of taxes imposed by the Kingdom of Spain. The acquiring or resulting corporation, as the case may be, will also be entitled to redeem the Contingent Convertible Capital Securities in the circumstances described in Section 12.08 with respect to any change or amendment to, or change in the application or official interpretation of the laws or regulations of such jurisdiction, which change or amendment must occur subsequent to the date of any merger, consolidation, sale or conveyance or lease permitted by Section 9.01 if the successor entity is not incorporated or tax resident in the Kingdom of Spain. In the event of assumption of the Company's obligations in connection with a merger, consolidation, sale or conveyance of substantially all of its assets, the Company shall be released from all obligations and covenants under this Contingent Convertible Capital Securities Indenture or the Contingent Convertible Capital Securities, as the case may be, and the successor corporation formed by such consolidation or amalgamation or into which the Company is merged or to which such conveyance or transfer is made shall succeed to and be substituted for, and may exercise every right and power of, the Company under this Contingent Convertible Capital Securities Indenture with the same effect as if such successor corporation had been named as the Company.

Section 9.03. *Assumption of Obligations.* Subject to the prior consent of the European Central Bank, if required, any direct or indirect subsidiary of the Company may assume the obligations of the Company under the Contingent Convertible Capital Securities without the consent of the Holders of the Contingent Convertible Capital Securities of such series, provided that:

(a) the successor entity shall expressly assume such obligations by an amendment to this Contingent Convertible Capital Securities Indenture, executed by the Company and such successor entity, if applicable, and delivered to the Trustee, in form satisfactory to the Trustee, and the Company shall, by amendment of this Contingent Convertible Capital Securities Indenture, unconditionally guarantee all obligations of such successor entity under the Contingent Convertible Capital Securities Indenture of such series and this Contingent Convertible Capital Securities Indenture so modified by such amendment;



200FX&=eN3orv@s;

(b) immediately after giving effect to such assumption of obligations, no Enforcement Event and no event which, after notice or lapse of time or both, would become an Enforcement Event, shall have occurred and be continuing; and

(c) the Company shall have delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such assumption complies with this Article and that all conditions precedent herein provided for relating to such assumption have been complied with.

Upon any such assumption, the successor entity shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Contingent Convertible Capital Securities Indenture with respect to any such Contingent Convertible Capital Securities with the same effect as if such successor entity had been named as the Company in this Contingent Convertible Capital Securities Indenture, and the Company or any legal and valid successor corporation which shall theretofore have become such in the manner prescribed herein, shall be released from all liability as obligor upon any such Contingent Convertible Capital Securities except as described in the following paragraph.

In the event of any assumption, Additional Amounts under the Contingent Convertible Capital Securities of such series will be payable in respect of taxes imposed by the assuming corporation’s jurisdiction of incorporation or tax residence (subject to exceptions equivalent to those that apply to the obligation to pay Additional Amounts pursuant to Section 11.04 in respect of taxes imposed by the laws of the Kingdom of Spain) on payments of Distributions or Liquidation Preference made on or subsequent to the date of such assumption. Additional Amounts with respect to payments of Distributions due prior to the date of such assumption will be payable only in respect of taxes imposed by the Kingdom of Spain. The assuming corporation will also be entitled to redeem the Contingent Convertible Capital Securities of such series in the circumstances described in Section 12.08 with respect to any change or amendment to, or change in the application or official interpretation of the laws or regulations of such jurisdiction, which change or amendment must occur subsequent to the date of any such assumption if the assuming entity is not incorporated or tax resident in the Kingdom of Spain. In the event of any such assumption, all obligations of the Company under the Contingent Convertible Capital Securities of such series shall immediately be discharged.

Section 9.04. *Substitution and Variation.* If a Capital Event or a Tax Event occurs and is continuing, the Company may substitute all (but not some) of the Contingent Convertible Capital Securities of any series or modify the terms of all (but not some) of the Contingent Convertible Capital Securities of such series, without any requirement for the consent or approval of the Holders of the Contingent Convertible Capital Securities of such series, so that they are substituted for, or varied to, become, or remain, Qualifying Notes, subject to having given not less than 30 nor more than 60 days’ notice to the Holders of the Contingent Convertible Capital Securities of such series in accordance with Section 1.06 (which notice shall be irrevocable and shall specify the date for substitution or, as applicable, variation).



Any such notice shall specify the relevant details of the manner in which such substitution or variation shall take effect and where the Holders of the Contingent Convertible Capital Securities of such series can inspect or obtain copies of the new terms and conditions of the Contingent Convertible Capital Securities. Such substitution or variation will be effected without any cost or charge to such Holders.

The Contingent Convertible Capital of any series shall cease to bear interest from (an including) the date of substitution thereof.

Any holder or beneficial owner of the Contingent Convertible Capital Securities of any series shall, by virtue of its acquisition of the Contingent Convertible Capital Securities of any series or any beneficial interest therein, be deemed to accept the substitution or variation of the terms of the Contingent Convertible Capital Securities of such series and to grant to the Company full power and authority to take any action and/or to execute and deliver any document in the name and/or on behalf of such Holder which is necessary or convenient to complete the substitution or variation of the terms of the Contingent Convertible Capital Securities of such series.

#### ARTICLE 10 SUPPLEMENTAL INDENTURES

Section 10.01. *Supplemental Indenture without Consent of Holders.* Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

- (a) to evidence the succession of another corporation to the Company and the assumption by any such successor of the covenants of the Company herein and in the Contingent Convertible Capital Securities;
- (b) to add to the covenants of the Company for the benefit of the Holders of all or any series of Contingent Convertible Capital Securities (and, if such covenants are to be for the benefit of fewer than all series of Contingent Convertible Capital Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Company;
- (c) to add any additional Enforcement Events;
- (d) to make changes to procedures relating to Trigger Conversion, delivery of the Common Shares, or ADSs, as applicable;
- (e) to change or eliminate any of the provisions of this Contingent Convertible Capital Securities Indenture, or any supplemental indenture, provided that any such change or elimination shall become effective only when there is no outstanding Contingent Convertible Capital Security of any series created prior to the execution of such supplemental indenture that is entitled to the benefit of such provision or as to which such supplemental indenture would apply;





(f) to secure the Contingent Convertible Capital Securities;

(g) to establish the form or terms of Contingent Convertible Capital Securities of any series as permitted by Sections 2.01 or 3.01;

(h) to change any Place of Payment, so long as the Place of Payment as required by Section 3.01 is maintained in The City of New York;

(i) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein or in any supplemental indenture;

(j) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Contingent Convertible Capital Securities of one or more series and to add to or change any of the provisions of this Contingent Convertible Capital Securities Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 7.12(b);

(k) to change or eliminate any provision of this Contingent Convertible Capital Securities Indenture as permitted by Section 1.08;

(l) to name a Trustee for a particular series of Contingent Convertible Capital Securities other than the Trustee named in the first paragraph of this Contingent Convertible Capital Securities Indenture and to provide for the appropriate changes related to such appointment for a particular series of Contingent Convertible Capital Securities;

(m) with respect to any Contingent Convertible Capital Security (including a Global Security) issued on or after the date hereof, to amend any such Contingent Convertible Capital Security to conform to the description of the terms of such Contingent Convertible Capital Security in the prospectus, prospectus supplement, product supplement, pricing supplement or any other similar offering document related to the offering of such Contingent Convertible Capital Security; or

(n) to change or modify any provision of this Contingent Convertible Capital Securities Indenture as necessary to ensure that the Contingent Convertible Capital Securities of any series shall be convertible into ordinary shares of Newco in the event of a Newco Scheme.

Section 10.02. *Supplemental Indentures with Consent of Holders.* With the consent of the Holders of not less than a majority in aggregate Liquidation Preference of the Outstanding Contingent Convertible Capital Securities of each series affected by such supplemental Contingent Convertible Capital Securities Indenture (voting as a class), by Act of said Holders delivered to the Company and the Trustee, the Company, when



authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Contingent Convertible Capital Securities Indenture or of modifying in any manner the rights of the Holders of Contingent Convertible Capital Securities of such series under this Contingent Convertible Capital Securities Indenture; provided, however, that no such supplemental indenture may, without the consent of the Holder of each Outstanding Contingent Convertible Capital Security affected thereby,

(a) change the terms of any Contingent Convertible Capital Security to reduce the Liquidation Preference payable upon the redemption of, or the Distributions payable on any Contingent Convertible Capital Security, or change the obligation of the Company (or its successor) to pay Additional Amounts pursuant to Section 11.04 (except as contemplated by Section 9.01(a) and permitted by Section 10.01(a)) on the Contingent Convertible Capital Securities, or the currency of payment of the Liquidation Preference or Distributions on any such Contingent Convertible Capital Security, or change the Place of Payment, or impair the right to institute suit for the enforcement of any such payment when due and payable on or with respect to any Contingent Convertible Capital Security, or modify the calculation of and any adjustment to, the Conversion Price; or

(b) reduce the percentage in aggregate Liquidation Preference of the Outstanding Contingent Convertible Capital Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Contingent Convertible Capital Securities Indenture or of certain defaults hereunder and their consequences) provided for in this Contingent Convertible Capital Securities Indenture, or

(c) modify any of the provisions of this Section 10.02 except to increase any such percentage or to provide that certain other provisions of this Contingent Convertible Capital Securities Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Contingent Convertible Capital Security affected thereby; *provided, however*, that this subsection shall not be deemed to require the consent of any Holder with respect to changes in the references to “the Trustee” and concomitant changes in this Section, or the deletion of this proviso, in accordance with the requirements of Sections 7.12(b) and Section 10.01(j), or

(d) change in any manner adverse to the interests of the Holders of any Contingent Convertible Capital Securities the subordination provisions of the Contingent Convertible Capital Securities or the terms and conditions of the obligations of the Company in respect of the due and punctual payment of any amounts due and payable on the Contingent Convertible Capital Securities.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.



A supplemental indenture which changes or eliminates any covenant or other provision of this Contingent Convertible Capital Securities Indenture which has expressly been included solely for the benefit of one or more particular series of Contingent Convertible Capital Securities, or which modifies the rights of the Holders of Contingent Convertible Capital Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Contingent Convertible Capital Securities Indenture of the Holders of Contingent Convertible Capital Securities of any other series.

Section 10.03. *Execution of Supplemental Indentures.* In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Contingent Convertible Capital Securities Indenture, the Trustee shall be entitled to receive, and (subject to Section 7.01) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Contingent Convertible Capital Securities Indenture and constitutes a legal, valid and binding obligation of the Company, subject to customary exceptions. The Trustee may, but shall not be obliged to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Contingent Convertible Capital Securities Indenture or otherwise.

Section 10.04. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture under this Article, this Contingent Convertible Capital Securities Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Contingent Convertible Capital Securities Indenture for all purposes; and every Holder of Contingent Convertible Capital Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby, except as otherwise expressed therein.

Section 10.05. *Conformity with Trust Indenture Act.* Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

Section 10.06. *Reference in Contingent Convertible Capital Securities to Supplemental Indentures.* Contingent Convertible Capital Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Contingent Convertible Capital Securities of any series so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and such Contingent Convertible Capital Securities may be authenticated and delivered by the Trustee in exchange for Outstanding Contingent Convertible Capital Securities of such series.



ARTICLE 11  
COVENANTS

Section 11.01. *Payment of Liquidation Preference and Distributions.* The Company covenants and agrees for the benefit of each series of Contingent Convertible Capital Securities that it will duly and punctually pay the Liquidation Preference of and Distributions on, if any, (subject to the subordination provisions of Section 13.01 and Section 3.01) on the Contingent Convertible Capital Securities of that series when due and payable in accordance with the terms of the Contingent Convertible Capital Securities and this Contingent Convertible Capital Securities Indenture. Except as otherwise specified, as contemplated by Section 3.01 hereof, the Trustee shall act as Principal Paying Agent with respect to any series of Contingent Convertible Capital Securities.

Section 11.02. *Maintenance of Office or Agency.* The Company will maintain in each Place of Payment for any series of Contingent Convertible Capital Securities an office or agency where Contingent Convertible Capital Securities of that series may be presented or surrendered for payment, where Contingent Convertible Capital Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Contingent Convertible Capital Securities of that series and this Contingent Convertible Capital Securities Indenture may be served; *provided, however,* that at the option of the Company in the case of definitive Contingent Convertible Capital Securities of such series, payment of any Distributions thereon may be made by check mailed to the address of the Person entitled herein as such address shall appear in the Contingent Convertible Capital Security Register. With respect to the Contingent Convertible Capital Securities of any series, such office or agency in each Place of Payment shall be specified as contemplated by Section 3.01, and if not so specified, initially shall be 225 Liberty Street, New York, New York, 10286. Unless otherwise specified pursuant to Section 3.01, the Company will maintain in the Borough of Manhattan, The City of New York, an office or agency where notices and demands to or upon the Company in respect of Contingent Convertible Capital Securities of any series and this Contingent Convertible Capital Securities Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee. The Company hereby appoints the Trustee as its agent to receive all presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies (in or outside the Borough of Manhattan, The City of New York) where the Contingent Convertible Capital Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however,* that no such designation or rescission shall in any manner relieve the Company of any obligation to maintain an office or agency in each Place of Payment (except as otherwise indicated in this Section) for Contingent



Convertible Capital Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 11.03. *Money for Distributions to be Held in Trust.* If the Company shall at any time act as Paying Agent with respect to the Contingent Convertible Capital Securities of any series, it will, on or before each due date, if any, for payment of the Liquidation Preference or Distributions on any of the Contingent Convertible Capital Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the Liquidation Preference or Distributions so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Contingent Convertible Capital Securities, it will, prior to any due date for payment of the Liquidation Preference or Distributions on any Contingent Convertible Capital Securities of that series deposit with a Paying Agent a sum sufficient to pay the Liquidation Preference or Distributions so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such Liquidation Preference or Distributions, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or its failure so to act. Unless otherwise specified as contemplated by Section 3.01, the Trustee shall be the Company's Paying Agent. The Company will cause each Paying Agent for any series of Contingent Convertible Capital Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(a) hold all sums held by it for the payment of the Liquidation Preference or Distributions on Contingent Convertible Capital Securities of that series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(b) give the Trustee notice of any default by the Company (or any other obligor upon the Contingent Convertible Capital Securities of that series) in the making of any payment, when due and payable, or Liquidation Preference or Distributions on Contingent Convertible Capital Securities of that series; and

(c) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at the time, for the purpose of obtaining the satisfaction and discharge of this Contingent Convertible Capital Securities Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee such Paying Agent shall be released from all further liability with respect to such money.



200FX&=eNJG9alsk

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the Liquidation Preference or Distributions on any Contingent Convertible Capital Security of any series and remaining unclaimed for two years after such Liquidation Preference or Distributions have become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Contingent Convertible Capital Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published at least once, in an Authorized Newspaper, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be paid to the Company.

Section 11.04. *Additional Amounts.*

(a) Unless otherwise specified pursuant to Section 3.01, all payments of Distributions and other amounts payable in respect of Contingent Convertible Capital Securities by the Company 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 (collectively "Taxes") of whatever nature imposed or levied by or on behalf of Spain or any political subdivision thereof or any authority or agency therein or thereof having power to tax, unless the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law. In that event, the Company shall pay, in respect of any withholding or deduction imposed on payments of Distributions only (and not Liquidation Preference), such additional amounts ("**Additional Amounts**") as will result in Holders of any series of outstanding Contingent Convertible Capital Securities receiving such amounts as they would have received had no such withholding or deduction been required, provided that no payments of Additional Amounts will be made if and to the extent that the Company has insufficient Available Distributable Items to pay such additional amounts, Distributions on the Contingent Convertible Capital Securities of any series scheduled for payment in the then current financial year and any equivalent payments scheduled to be made in the then current financial year in respect of any other Parity Securities and CET1 Capital securities then outstanding, in each case excluding any portion of such payments already accounted for in determining the Available Distributable Items.

(b) The Company shall not be required to pay any Additional Amounts in relation to any payment in respect of any Contingent Convertible Capital Security:

(i) to, or to a third party on behalf of, a Holder if the Holder or the beneficial owner of Contingent Convertible Capital Securities of any series is liable for such Taxes in respect of such Contingent Convertible Capital Security by reason of his having some connection with Spain other than the mere holding of such Contingent Convertible Capital Security; or



(ii) to, or to a third party on behalf of, a Holder in respect of whose Contingent Convertible Capital Securities the Company does not receive such information as may be required in order to comply with the applicable Spanish tax reporting obligations (as amended or restated from time to time), including but not limited to the receipt in a timely manner of a duly executed and completed certificate in accordance with Law 10/2014 and Royal Decree 1065/2007, as amended, and any implementing legislation or regulation; or

(iii) to, or to a third party on behalf of, a Holder of Contingent Convertible Capital Securities if the Holder or the beneficial owner of Contingent Convertible Capital Securities of any series failed to make any necessary claim or to comply with any certification, identification or other requirements concerning the nationality, residence, identity or connection with the taxing jurisdiction of such Holder or beneficial owner, if such claim or compliance is required by statute, treaty, regulation or administrative practice of the taxing jurisdiction of the Company as a condition to relief or exemption from such taxes; or

(iv) presented for payment (where presentation is required) more than 30 days after the Relevant Date, except to the extent that the relevant Holder would have been entitled to such Additional Amounts on presenting the same for payment on the expiry of such period of 30 days; or

(v) in relation to any estate, inheritance, gift, sales, transfer or similar taxes; or

(vi) to, or to a third party on behalf of, individuals resident for tax purposes in the Kingdom of Spain; or

(vii) to, or to a third party on behalf of, a Spanish-resident legal entity subject to Spanish corporation tax if the Spanish tax authorities determine that the Contingent Convertible Capital Securities of any series do not comply with exemption requirements specified in the Reply to a Consultation of the Directorate General for Taxation (*Dirección General de Tributos*) dated 27 July 2004 and require a withholding to be made; or

(viii) where the withholding or deduction is required pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to Sections 1471 through 1474 of the Code (“FATCA”), any regulations or agreements thereunder, any official interpretations thereof, any intergovernmental agreements with respect thereto (including the



intergovernmental agreement between the United States and Spain on the implementation of FATCA), or any law implementing an intergovernmental agreement or any regulations or official interpretations relating thereto.

(c) In addition, Additional Amounts will not be payable with respect to any Taxes that are imposed in respect of any combination of the items listed in (b)(i) through (b)(viii) set forth above.

(d) Additional Amounts will also not be paid with respect to any payment to a Holder who is a fiduciary, a partnership, a limited liability company or person other than the sole beneficial owner of that payment, to the extent that payment would be required by the laws of Spain (or any political subdivision thereof) to be included in the income, for tax purposes, of a beneficiary or settlor with respect to the fiduciary, a member of that partnership, an interest holder in that limited liability company or a beneficial owner who would not have been entitled to the Additional Amounts had it been the Holder.

For the purposes of this Section 11.04:

“Relevant Date” means, in respect of any payment, the date on which such payment first becomes due and payable, except that, if the full amount of the moneys payable has not been duly received by the Principal Paying Agent on or prior to such due date, it means the date on which, the full amount of such moneys having been so received and being available for payment to Holders, notice to that effect is duly given to the Holders in accordance with Section 1.06.

In the event that any withholding or deduction for or on account of any taxes by the Company is required, at least 10 days prior to each date of payment of Liquidation Preference of or Distributions on the relevant series of Contingent Convertible Capital Securities, or, if later, promptly after the obligation to withhold or deduct becomes known to the Company, the Company will furnish to the Trustee and the Paying Agent, if other than the Trustee, an Officer’s Certificate specifying the amount required to be withheld or deducted on such payments to such Holders, certifying that the Company shall pay such amounts required to be withheld to the appropriate taxing jurisdiction and certifying to the fact that the Additional Amounts will be payable and the amounts so payable to each Holder, and that the Company will pay to the Trustee or the Paying Agent the Additional Amounts required to be paid; provided that no such Officer’s Certificate will be required prior to any date of payment of Liquidation Preference of or Distributions on such Contingent Convertible Capital Securities if there has been no change with respect to the matters set forth in a prior Officer’s Certificate. The Trustee and Paying Agent may rely on the fact that any Officer’s Certificate contemplated by this paragraph has not been furnished as evidence of the fact that no withholding or deduction for or on account of any taxes is required. The Company covenants to indemnify the Trustee and Paying Agent for and to hold them harmless against any loss, liability or expense reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any such Officer’s Certificate furnished pursuant to this paragraph or on the fact that any Officer’s Certificate contemplated by this paragraph has not been furnished.





Except where the context requires otherwise, any references in this Contingent Convertible Capital Securities Indenture to Distributions in respect of the Contingent Convertible Capital Securities shall include any Additional Amounts payable with respect thereto.

Section 11.05. *Corporate Existence.* Subject to Article 9, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, *provided, however,* that the foregoing shall not obligate the Company to preserve any such right or franchise if the Company shall determine that the preservation thereof is no longer desirable in the conduct of its business and that the loss thereof is not disadvantageous in any material respect to any Holder.

Section 11.06. *Statement as to Compliance.* The Company will deliver to the Trustee, within 120 days after the end of each fiscal year, a certificate in compliance with Section 314(a)(4) of the Trust Indenture Act.

## ARTICLE 12 REDEMPTION AND REPURCHASE OF CONTINGENT CONVERTIBLE CAPITAL SECURITIES

Section 12.01. *Applicability of Article.* Contingent Convertible Capital Securities of any series shall be redeemable in accordance with their terms and (except as otherwise specified pursuant to Section 3.01 for Contingent Convertible Capital Securities of any series) in accordance with this Article. Contingent Convertible Capital Securities of any series may not be redeemed except in accordance with provisions of the Applicable Banking Regulations. The Contingent Convertible Capital Securities of any series may not be redeemed in whole or in part at the option of the Holder thereof.

Section 12.02. *Election to Redeem; Notice to Trustee.* The election of the Company to redeem any Contingent Convertible Capital Securities shall be evidenced by a Board Resolution. Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Contingent Convertible Capital Securities, the Company shall, at least 30 days prior, but not more than 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the Liquidation Preference of Contingent Convertible Capital Securities of such series to be redeemed. In the case of any redemption of Contingent Convertible Capital Securities of any series prior to the expiration of any provision restricting such redemption provided in the terms of such Contingent Convertible Capital Securities or elsewhere in this Contingent Convertible Capital Securities Indenture, the Company shall furnish the Trustee with respect to such Contingent Convertible Capital Securities with an Officer's Certificate evidencing compliance with or waiver of such provision.

Section 12.03. *Selection by Trustee of Contingent Convertible Capital Securities to be Redeemed.* If less than all the Contingent Convertible Capital Securities of any series are to be redeemed, the particular Contingent Convertible Capital Securities to be redeemed shall be selected not less than 30 days nor more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Contingent Convertible Capital



200FX&amp;=8eN4V9t4L3

Securities of such series not previously called for redemption, pro rata, by lot or by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Contingent Convertible Capital Securities of that series or any multiple thereof) of the Liquidation Preference of Contingent Convertible Capital Securities of such series of a denomination larger than the minimum authorized denomination for Contingent Convertible Capital Securities of that series. Redemption in accordance with regulations of the list authority, stock exchange and/or quotation system shall conform to the prospectus.

The Trustee shall promptly notify the Company in writing of the Contingent Convertible Capital Securities selected for redemption and, in the case of any Contingent Convertible Capital Securities selected for partial redemption, the Liquidation Preference thereof to be redeemed.

For all purposes of this Contingent Convertible Capital Securities Indenture, unless the context otherwise requires, all provisions relating to the redemption of Contingent Convertible Capital Securities shall relate in the case of any Contingent Convertible Capital Securities redeemed or to be redeemed only in part, to the portion of the Liquidation Preference of such Contingent Convertible Capital Security which has been or is to be redeemed.

Section 12.04. *Redemption Procedures; Notice of Redemption.*

(a) The decision to redeem the Contingent Convertible Capital Securities must be irrevocably notified by the Company to Holders of the Contingent Convertible Capital Securities of such series upon not less than 30 nor more than 60 days' notice prior to the relevant redemption date (i) through the filing of a relevant event (*hecho relevante*) announcement with the CNMV and its publication in accordance with the rules and regulations of any applicable stock exchange or other relevant authority and (ii) in accordance with Section 1.06, and to the trustee at least five (5) Business Days prior to such date, unless a shorter notice period shall be satisfactory to the Trustee.

(b) Any notice of redemption will state: the redemption date; that on the redemption date the Redemption Price will, subject to the satisfaction of the conditions set forth in this Contingent Convertible Capital Securities Indenture become due and payable upon each Contingent Convertible Capital Security being redeemed and that, subject to certain exceptions, Distributions will cease to accrue on or after that date; the place or places where the Contingent Convertible Capital Securities are to be surrendered for payment of the redemption price; and the CUSIP, Common Code and/or ISIN number or numbers, if any, with respect to the Contingent Convertible Capital Securities being redeemed.

(c) If the Company gives notice of redemption of the Contingent Convertible Capital Securities of any series, then by 12:00 noon (London time) on the relevant redemption date, the Company will:

- (i) irrevocably deposit with the Principal Paying Agent funds sufficient to pay the Redemption Price; and
- (ii) give the Principal Paying Agent irrevocable instructions and authority to pay the Redemption Price to the Holders.



(d) If the notice of redemption has been given on any series of Contingent Convertible Capital Securities, and the funds deposited and instructions and authority to pay given as required above, then on the date of such deposit:

- (i) Distributions on the Contingent Convertible Capital Securities of such series shall cease to accrue;
- (ii) such Contingent Convertible Capital Securities of such series will no longer be considered outstanding; and
- (iii) the Holders of Contingent Convertible Capital Securities of such series will no longer have any rights as holders except the right to receive the Redemption Price.

(e) If in connection with any series of Contingent Convertible Capital Securities 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 Company improperly withholds or refuses to pay the Redemption Price of the Contingent Convertible Capital Securities of such series, Distributions will continue to accrue, subject as provided in Section 3.08 and Section 3.09, at the rate specified from (and including) the redemption date to (but excluding) the date of actual payment of the Redemption Price.

(f) The Company may not give a notice of redemption pursuant to this Section 12.04 if a Trigger Event Notice has been given. If a Trigger Event Notice is given after a notice of redemption shall have been given by the Company but before the redemption has occurred, such notice of redemption shall automatically be revoked and be null and void and the relevant redemption shall not be made.

Section 12.05. *Deposit of Redemption Price.* On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as Paying Agent, segregate and hold in trust as provided in Section 11.03) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be a Distribution Date) accrued but unpaid Distributions on, all the Contingent Convertible Capital Securities which are to be redeemed on that date.

Section 12.06. *Contingent Convertible Capital Securities Payable on Redemption Date.* Notice of redemption having been given as set forth in Section 12.04, the Contingent Convertible Capital Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and Distributions, if any) such Contingent Convertible Capital Securities shall cease to accrue Distributions for the period following the Redemption Date. Upon surrender of



any such Contingent Convertible Capital Security for redemption in accordance with Section 12.04, such Contingent Convertible Capital Security shall be paid by the Company at the Redemption Price, together with any accrued but unpaid Distributions thereon to (but excluding) the Redemption Date; *provided, however*, that unless otherwise specified as contemplated by Section 3.01, a Distribution which is payable on a Distribution Date which is the Redemption Date, shall be payable to the Holders of such Contingent Convertible Capital Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Regular Record Dates according to the terms of the Contingent Convertible Capital Securities and the provisions of Section 3.07. Contingent Convertible Capital Securities in definitive form shall be presented for redemption to the Paying Agent.

If any Contingent Convertible Capital Security called for redemption shall not be so paid upon surrender thereof for redemption, the Contingent Convertible Capital Security shall, until paid, continue to accrue Distributions from and after the Redemption Date in accordance with its terms and the provisions of Section 3.07.

Section 12.07. *Contingent Convertible Capital Securities Redeemed In Part.* Any Contingent Convertible Capital Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Contingent Convertible Capital Security without service charge, a new Contingent Convertible Capital Security or Contingent Convertible Capital Securities of the same series of any authorized denomination as requested by such Holder, in Liquidation Preference equal to and in exchange for the unredeemed portion of the Liquidation Preference of the Contingent Convertible Capital Security so surrendered.

Section 12.08. *Optional Redemption Due To Changes In Tax Treatment.* Unless otherwise provided as contemplated by Section 3.01 with respect to the Contingent Convertible Capital Securities of any series, if, on or after the date of issuance of any series of Contingent Convertible Capital Securities, (i) there is a Tax Event, and (ii) such circumstances are evidenced by the delivery by the Company to the Trustee of a certificate signed by two directors of the Company stating that the said circumstances prevail and describing the facts leading thereto and a copy of the Regulator's consent to the redemption, the Contingent Convertible Capital Securities of such series may be redeemed, in whole but not in part, at the option of the Company, subject to the prior consent of the Regulator and otherwise in accordance with Applicable Banking Regulations then in force, at any time, at the Redemption Price per Contingent Convertible Capital Security.

Section 12.09. *Optional Redemption Due To Capital Event.* Unless otherwise provided as contemplated by Section 3.01 with respect to the Contingent Convertible Capital Securities of any series, if, on or after the issue date of the Contingent Convertible Capital Securities of any series, (i) there is a Capital Event, and (ii) such circumstances are evidenced by the delivery by the Company to the trustee of a certificate



200FX&amp;=8eN49cJkLJ

signed by two directors of the Company stating that the said circumstances prevail and describing the facts leading thereto and a copy of the Regulator's consent to the redemption, the Contingent Convertible Capital Securities of such series may be redeemed, in whole but not in part, at the option of the Company, subject to the prior consent of the Regulator and otherwise in accordance with Applicable Banking Regulations then in force, at any time, at the Redemption Price.

Section 12.10. *Repurchase of Contingent Convertible Capital Securities.* (a) Unless otherwise provided as contemplated by Section 3.01 with respect to the Contingent Convertible Capital Securities of any series, the Company and any of its subsidiaries or any third party designated by any of them, may at any time repurchase Contingent Convertible Capital Securities of any series in the open market or otherwise at any price, in accordance with Applicable Banking Regulations in force at the relevant time.

(b) Notwithstanding any other provision of Section 4.06 and subject to compliance with the provisions of the Spanish Companies Act and/or with any Applicable Banking Regulations, the Company 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 Company (including Common Shares) or any depositary or other receipts or certificates representing the same without the consent of the Holders.

Section 12.11. *Optional Redemption.* Unless otherwise provided as contemplated by Section 3.01 with respect to the Contingent Convertible Capital Securities of any series, the Contingent Convertible Capital Securities of any series may be redeemed by the Company in whole but not in part, in accordance with Applicable Banking Regulations in force at the relevant time, and subject to the consent of the Regulator.

Section 12.12. *Cancelled Distributions Not Payable Upon Redemption.* Any Distributions that have been cancelled or deemed cancelled pursuant to Sections 3.08 or 3.09 hereof shall not be payable if the Contingent Convertible Capital Securities are redeemed pursuant to Sections 12.08, 12.09 or 12.10 hereof.

## ARTICLE 13

### SUBORDINATION OF CONTINGENT CONVERTIBLE CAPITAL SECURITIES

Section 13.01. *Contingent Convertible Capital Securities Subordinate to Senior Claims.* (a) Unless previously converted into Common Shares pursuant Section 4.01, the payment obligations of the Company under the Contingent Convertible Capital Securities of any series on account of the Liquidation Preference or otherwise of principal constitute direct, unconditional, unsecured and subordinated obligations (*créditos subordinados*) of the Company and, in accordance with Additional Provision 14.2° of Law 11/2015, 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 Company for so long as the obligations of the Company in respect of the contingent convertible capital securities constitute an Additional Tier 1 Instrument, rank:

- (i) *pari passu* among themselves and with (a) all other claims in respect of any liquidation preference or otherwise for principal in respect of any outstanding Additional Tier 1 Instruments and (b) any other subordinated obligations (*créditos subordinados*) which by law and/or by their terms, to the extent permitted by Spanish law, rank *pari passu* with the Company's obligations under Additional Tier 1 Instruments;



- (ii) junior to (a) any unsubordinated obligations of the Company, (b) any subordinated obligations (*créditos subordinados*) of the Company which become subordinated pursuant to Article 92.1° of the Spanish Insolvency Law and (c) any other subordinated obligations (*créditos subordinados*) which by law and/or by their terms, to the extent permitted by Spanish law, rank senior to the Company’s obligations under Additional Tier 1 Instruments; and
- (iii) senior to (a) any claims for the liquidation amount of the Common Shares and (b) any other subordinated obligations (*créditos subordinados*) of the Company which by law and/or by their terms, to the extent permitted by Spanish law, rank junior to the Company’s obligations under Additional Tier 1 Instruments.

(b) The Company agrees with respect to any series of Contingent Convertible Capital Securities and each holder of Contingent Convertible Capital Securities of any series, by his or her acquisition of a Contingent Convertible Capital Security, will be deemed to have agreed to the subordination as described in this Section 13.01. Each such holder will be deemed to have irrevocably waived his or her rights of priority which would otherwise be accorded to him or her under the laws of Spain, to the extent necessary to effectuate the subordination provisions of the Contingent Convertible Capital Security. In addition, each holder of Contingent Convertible Capital Securities of any series by his or her acquisition of the securities authorizes and directs the applicable trustee on his or her behalf to take such action as may be necessary or appropriate to effectuate the subordination of the relevant Contingent Convertible Capital Securities as provided in this Contingent Convertible Capital Securities Indenture and as summarized herein and appoints the Trustee his attorney-in-fact for any and all such purposes.

(c) The Company may not issue, or guarantee the issue of, any Parity Securities or other instruments equivalent to Parity Securities ranking, either directly or through a guarantee, senior to the Contingent Convertible Capital Securities of any series, unless the terms and conditions of the Contingent Convertible Capital Securities of such series are amended so as to rank *pari passu* with any such issue of senior securities.

Section 13.02. *Waiver of Right of Set-Off.* Subject to applicable law, neither any holder or beneficial owner of the Contingent Convertible Capital Securities of any series nor the Trustee acting on behalf of the holders of the Contingent Convertible Capital Securities of such series may exercise, claim or plead any right of set-off, compensation or retention in respect of any amount owed to it by the Company in respect of, or arising under, or in connection with, the Contingent Convertible Capital Securities of such series or this Contingent Convertible Capital Securities Indenture and each Holder and beneficial owner of the Contingent Convertible Capital Securities of such series, by virtue of its holding of any Contingent Convertible Capital Securities of such series or



any interest therein, and the Trustee acting on behalf of the holders of the Contingent Convertible Capital Securities of such series, shall be deemed to have waived all such rights of set-off, compensation or retention. If, notwithstanding the above, any amounts due and payable to any holder or beneficial owner of a Contingent Convertible Capital Security of any series or any Distributions thereon by the Company in respect of, or arising under, the Contingent Convertible Capital Securities of such series are discharged by set-off, such holder or beneficial owner shall, subject to applicable law, immediately pay an amount equal to the amount of such discharge to the Company (or, if a Liquidation Event shall have occurred, the liquidator or administrator of the Company, as the case may be) and, until such time as payment is made, shall hold an amount equal to such amount in trust (where possible) or otherwise for the Company (or the liquidator or administrator of the Company, as the case may be) and, accordingly, any such discharge shall be deemed not to have taken place.

Section 13.03. *Provisions Solely to Define Relative Rights.* The provisions of this Article 13 are and are intended solely for the purpose of defining the relative rights of the Holders of the Contingent Convertible Capital Securities of each series on the one hand and the Senior Creditors on the other hand. Nothing contained in this Article or elsewhere in this Contingent Convertible Capital Securities Indenture or in such Contingent Convertible Capital Securities is intended to or shall (a) impair, as among the Company and the Holders of the Contingent Convertible Capital Securities, the obligation of the Company, which is absolute and unconditional, to pay to the holders of such claims the Liquidation Preference and Distributions on such Contingent Convertible Capital Securities as and when the same shall become due and payable in accordance with their terms and this Contingent Convertible Capital Securities Indenture; or (b) affect the relative rights against the Company of the Holders of such Contingent Convertible Capital Securities; or (c) prevent the Trustee or the Holder of any Contingent Convertible Capital Securities of the series from exercising all remedies otherwise permitted by applicable law upon default under this Contingent Convertible Capital Securities Indenture, subject to the rights, if any, under this Article of the Senior Creditors to receive cash, property or securities otherwise payable or deliverable to the Trustee or such holder.

Section 13.04. *Trustee to Effectuate Subordination.* Each Holder of a Contingent Convertible Capital Security by his acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination of the Contingent Convertible Capital Securities provided in this Article 13 and appoints the Trustee his attorney-in-fact for any and all such purposes.

Section 13.05. *Trustee Not Fiduciary for Senior Creditors.* With respect to the Senior Creditors, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Contingent Convertible Capital Securities Indenture, and no implied covenants or obligations with respect to the Senior Creditors shall be read into this Contingent Convertible Capital Securities Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the Senior Creditors and shall not be liable to any such holders if it shall mistakenly pay over or distribute to Holders of Contingent Convertible Capital Securities of the series or to the Company or to any other Person cash, property or securities to which any Senior Creditors shall be entitled by virtue of this Article or otherwise.



200FX&=eN33gwyl;

Section 13.06. *Rights of Trustee as Senior Creditor; Preservation of Trustee’s Rights.* The Trustee in its individual or any other capacity shall be entitled to all the rights set forth in this Article with respect to any claims of Senior Creditors which may at any time be held by it, to the same extent as any other Senior Creditor, and nothing in this Contingent Convertible Capital Securities Indenture or the Trust Indenture Act shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.08 and Section 7.08.

Section 13.07. *Article Applicable to Paying Agents.* At all times when a Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term “**Trustee**” as used in this Article shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; *provided, however,* that Section 13.06 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

ARTICLE 14  
BAIL-IN AND RESOLUTION ACTIONS

Section 14.01. *Agreement and Acknowledgment with Respect to the Exercise of the Bail-in Power.*

(a) Notwithstanding any other term of the Contingent Convertible Capital Securities of any series or any other agreements, arrangements, or understandings between the Company and any Holder of the Contingent Convertible Capital Securities of any series, by its acquisition of the Contingent Convertible Capital Securities of any series, each Holder (which, for the purposes of this Section 14.01, includes each holder of a beneficial interest in the Contingent Convertible Capital Securities of any series) acknowledges, accepts, consents to and agrees to be bound by the exercise of any Bail-in Power (as defined herein) by the Relevant Resolution Authority that may result in the write-down or cancellation of all or a portion of the Amounts Due on the Contingent Convertible Capital Securities and/or the conversion of all or a portion of the Amounts Due on the Contingent Convertible Capital Securities into shares or other securities or other obligations of the Company or another person, including by means of a variation to the terms of the Contingent Convertible Capital Securities to give effect to the exercise by the Relevant Resolution Authority of such Bail-in Power. Each Holder of the Contingent Convertible Capital Securities further acknowledges and agrees that the rights of the Holders of the Contingent Convertible Capital Securities are subject to—and will be varied, if necessary, so as to give effect to—the exercise of any Bail-in Power by the Relevant Resolution Authority. No repayment or payment of Amounts Due on the Contingent Convertible Capital Securities of any series will become due and payable or





be paid after the exercise of any Bail-in Power by the Relevant Resolution Authority if and to the extent such amounts have been reduced, converted, cancelled, amended or altered as a result of such exercise.

The potential write-down or cancellation of all or a portion of the principal amount of—or Distributions on—the Contingent Convertible Capital Securities or the conversion of the Contingent Convertible Capital Securities into shares, other security or other obligations in connection with the exercise of any Bail-in Power by the Relevant Resolution Authority is separate and distinct from a conversion or write-down following a Trigger Event although these events may occur consecutively.

(b) Upon the Company being informed or notified by the Relevant Resolution Authority of the actual exercise of the date from which the Bail-in Power is effective with respect to the Contingent Convertible Capital Securities, the Company will provide a written notice to the Holders of the Contingent Convertible Capital Securities of such series without delay regarding the exercise of the Bail-in Power. Any delay or failure by the Company to give notice shall not affect the validity and enforceability of the Bail-in Power nor the effects on the Contingent Convertible Capital Securities described in this clause. The Company will also deliver a copy of such notice to the Trustee for information purposes.

(c) The exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Contingent Convertible Capital Securities shall not constitute an Event of Default or an Enforcement Event and the terms and conditions of the Contingent Convertible Capital Securities shall continue to apply in relation to the residual principal amount of, or outstanding amount payable with respect to, the Contingent Convertible Capital Securities subject to any modification of the amount of Distributions payable to reflect the reduction of the principal amount, and any further modification of the terms that the Relevant Resolution Authority may decide in accordance with applicable laws and regulations relating to the resolution of credit institutions, investment firms and/or Group entities incorporated in the relevant Member State.

(d) Neither a reduction or cancellation, in part or in full of the Amounts Due on, the conversion thereof into another security or obligation of the Company or another person, as a result of the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Company, nor the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Contingent Convertible Capital Securities of any series will be an Enforcement Event.

(e) Upon the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Contingent Convertible Capital Securities of any series, the Company will provide a written notice to the holders of the Contingent Convertible Capital Securities of such series through DTC as soon as practicable regarding such exercise of the Bail-in Power. The Company will also deliver a copy of such notice to the Trustee for information purposes.



(f) By its acquisition of the Contingent Convertible Capital Securities of any series, each Holder of the Contingent Convertible Capital Securities of such series, (which, for the purposes of this Section 14.01, includes each holder of a beneficial interest in the Contingent Convertible Capital Securities of such series), to the extent permitted by the Trust Indenture Act, will waive any and all claims, in law and/or in equity, against the Trustee for, agree not to initiate a suit against the trustee in respect of, and agree that the Trustee will not be liable for, any action that the Trustee takes, or abstains from taking, in either case in accordance with the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Contingent Convertible Capital Securities of such series.

(g) Additionally, by its acquisition of the Contingent Convertible Capital Securities of any series, each Holder of the Contingent Convertible Capital Securities of such series acknowledges and agrees that, upon the exercise of the Bail-in Power by the Relevant Resolution Authority:

(i) the Trustee will not be required to take any further directions from the Holders of the Contingent Convertible Capital Securities of such series with respect to any portion of the Contingent Convertible Capital Securities of such series that are written-down, converted to equity and/or cancelled under this Contingent Convertible Capital Securities Indenture, which authorizes Holders of a majority in aggregate outstanding Liquidation Preference of the outstanding Contingent Convertible Capital Securities of such series to direct certain actions relating to the Contingent Convertible Capital Securities of such series; and

(ii) this Contingent Convertible Capital Securities Indenture will not impose any duties upon the Trustee whatsoever with respect to the exercise of the Bail-in Power by the Relevant Resolution Authority.

provided, however, that notwithstanding the exercise of the Bail-in Power by the Relevant Resolution Authority, so long as this Contingent Convertible Capital Securities of any series remain outstanding, there will at all times be a Trustee for this Contingent Convertible Capital Securities of such series in accordance with the Contingent Convertible Capital Securities Indenture, and the resignation and/or removal of the Trustee and the appointment of a successor Trustee will continue to be governed by this Contingent Convertible Capital Securities Indenture, including to the extent no additional supplemental indenture or amendment is agreed upon in the event the Contingent Convertible Capital Securities of such series remain outstanding following the completion of the exercise of the Bail-in Power.

(h) By its acquisition of the Contingent Convertible Capital Securities of any series, each holder of the Contingent Convertible Capital Securities of such series acknowledges and agrees that neither a cancellation or deemed cancellation of the Liquidation Preference or Distributions (in each case, in whole or in part), nor the exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Contingent Convertible Capital Securities of such series will give rise to a default for purposes of Section 315(b) (*Notice of Default*) and Section 315(c) (*Duties of the Trustee in Case of Default*) of the Trust Indenture Act.



200FX&=8eN3HqLpLt

(i) Each Holder of the Contingent Convertible Capital Securities of any series that acquires such Contingent Convertible Capital Securities in the secondary market (including each beneficial owner) shall be deemed to acknowledge, agree to be bound by and consent to the same provisions specified herein to the same extent as the Holders of the Contingent Convertible Capital Securities that acquire the Contingent Convertible Capital Securities upon their initial issuance, including, without limitation, with respect to the acknowledgment and agreement to be bound by and consent to the terms of the Contingent Convertible Capital Securities, including in relation to the Bail-in-Power.

(j) By purchasing the Contingent Convertible Capital Securities of any series, each Holder (including each beneficial owner) of the Contingent Convertible Capital Securities of such series shall be deemed to have authorized, directed and requested DTC and any direct participant in DTC or other intermediary through which it holds Contingent Convertible Capital Securities of such series to take any and all necessary action, if required, to implement the exercise of the Bail-in Power with respect to the Contingent Convertible Capital Securities of such series as it may be imposed, without any further action or direction on the part of such Holder.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Contingent Convertible Capital Securities Indenture and of signature pages by facsimile or electronic format (i.e., "pdf" or "tif") transmission shall constitute effective execution and delivery of this Contingent Convertible Capital Securities Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes.



200FX&=8eN3HtoYsd

IN WITNESS WHEREOF, the Company and the Trustee have caused this Contingent Convertible Capital Securities Indenture to be duly executed, all as of the day and year first above written.

BANCO SANTANDER, S.A.

By: \_\_\_\_\_  
Name:  
Title:

THE BANK OF NEW YORK MELLON, LONDON  
BRANCH, AS TRUSTEE

By: \_\_\_\_\_  
Name:  
Title:



## APPENDIX 1: PROCEDURES FOR COMPLIANCE WITH SPANISH TAX LEGISLATION

### Information Procedures and Certification Obligations of the Trustee or Paying Agent in respect of payments under the Contingent Convertible Capital Securities

1. *Delivery of the Payment Information Certificate:* In connection with each payment of income under the Contingent Convertible Capital Securities, the Trustee or Paying Agent shall deliver to the Company by the close of business on the business day immediately preceding the day on which such payment is made a duly completed and executed Payment Information Certificate substantially in the form set forth in Exhibit I hereto (*Form of Payment Information Certificate*). Such form may be delivered initially by email, in pdf form, or by fax, provided that the original is delivered by the end of the following month.

If the Payment Information Certificate is delivered by the Trustee or Paying Agent in a timely manner to the Company, the relevant income payment will be made free and clear of Spanish withholding tax.

The Trustee or Paying Agent shall have no duty or responsibility to comply with Spanish tax laws arising out of this Contingent Convertible Capital Securities Indenture, and may request and rely conclusively upon any instructions from the Company in respect of any action necessary or required to be taken by the Trustee or Paying Agent pursuant to this Appendix 1; *provided, however, that* in no event shall the Trustee or Paying Agent be required to expend or risk its own funds in the performance of any of its duties pursuant to this Appendix 1, or be obligated to take any legal or other action which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with acceptable indemnification.

The Company agrees to instruct the Trustee or Paying Agent in writing with respect to any certifications that may be required under Spanish law, and the Trustee or Paying Agent acknowledges that this Appendix 1 shall constitute an instruction in this regard, unless otherwise instructed in writing by the Company.

2. *Failure to deliver the Payment Information Certificate:* In the event that the Trustee or Paying Agent fails or for any reason is unable to deliver a timely, duly completed Payment Information Certificate as described above to the Company in respect of a payment of income under the Contingent Convertible Capital Securities, the Trustee or Paying Agent shall withhold Spanish income tax on behalf of the Company from the relevant payment at the then-applicable rate (currently set at 19%).
3. If, after the relevant payment date but before the 10th day of the month immediately following the relevant payment date the Trustee or Paying Agent provides the duly completed Payment Information Certificate to the Company, then the Company shall instruct the Trustee or Paying Agent to immediately



transfer the amounts withheld in respect of the relevant payment pursuant to paragraph 2 above by way of reimbursement of the amounts withheld on the relevant payment date and completion of the corresponding income payment in respect of payments under the Contingent Convertible Capital Securities.

4. If the Trustee or Paying Agent fails or for any reason is unable to submit a duly completed and executed Payment Information Certificate to the Company by the 10th day of the month immediately following the relevant payment date, the Trustee or Paying Agent shall immediately return (but in any event no later than the 10th day of the month immediately following the relevant payment date) to the Company any remaining amount of the 19% tax withheld in respect of the relevant payment, and investors will have to apply directly to the Spanish tax authorities for any refund to which they may be entitled.



200FX&amp;=8eN4MntyLz

BANCO SANTANDER, S.A

Donnelley Financial

VDI-W7-PR3-1015  
12.1.14

ADG manag0ma

01-Apr-2017 02:58 EST

353001 EX4 4 126 3\*

FORM F-3

NYC

HTM ESS 0C

Page 1 of 1

## EXHIBIT I

**Anexo al Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos, aprobado por Real Decreto 1065/2007**

**Modelo de declaración a que se refieren los apartados 3, 4 y 5 del artículo 44 del Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos**

Annex to Royal Decree 1065/2007, of 27 July, approving the General Regulations of the tax inspection and management procedures and developing the common rules of the procedures to apply taxes

Declaration form referred to in paragraphs 3, 4 and 5 of Article 44 of the General Regulations of the tax inspection and management procedures and developing the common rules of the procedures to apply taxes

**Don (nombre), con número de identificación fiscal ( )<sup>(1)</sup>, en nombre y representación de (entidad declarante), con número de identificación fiscal ( )<sup>(1)</sup> y domicilio en ( ) en calidad de (marcar la letra que proceda):**

Mr. (name), with tax identification number ( )<sup>(1)</sup>, in the name and on behalf of (entity), with tax identification number ( )<sup>(1)</sup> and address in ( ) as (function - mark as applicable):

**(a) Entidad Gestora del Mercado de Deuda Pública en Anotaciones.**

(a) Management Entity of the Public Debt Market in book entry form.

**(b) Entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero.**

(b) Entity that manages the clearing and settlement system of securities resident in a foreign country.

**(c) Otras entidades que mantienen valores por cuenta de terceros en entidades de compensación y liquidación de valores domiciliadas en territorio español.**

(c) Other entities that hold securities on behalf of third parties within clearing and settlement systems domiciled in the Spanish territory.

**(d) Agente de pagos designado por el emisor.**

(d) Fiscal Agent appointed by the issuer.



**Formula la siguiente declaración, de acuerdo con lo que consta en sus propios registros:**

Makes the following statement, according to its own records:

**1. En relación con los apartados 3 y 4 del artículo 44:**

1. In relation to paragraphs 3 and 4 of Article 44:

**1.1 Identificación de los valores**

1.1 Identification of the securities

**1.2 Fecha de pago de los rendimientos (o de reembolso si son valores emitidos al descuento o segregados)**

1.2 Income payment date (or refund if the securities are issued at discount or are segregated)

**1.3 Importe total de los rendimientos (o importe total a reembolsar, en todo caso, si son valores emitidos al descuento o segregados)**

1.3 Total amount of income (or total amount to be refunded, in any case, if the securities are issued at discount or are segregated)

**1.4 Importe de los rendimientos correspondiente a contribuyentes del Impuesto sobre la Renta de las Personas Físicas, excepto cupones segregados y principales segregados en cuyo reembolso intervenga una Entidad Gestora**

1.4 Amount of income corresponding to Personal Income Tax taxpayers, except segregated coupons and segregated principals for which reimbursement an intermediary entity is involved

**1.5 Importe de los rendimientos que conforme al apartado 2 del artículo 44 debe abonarse por su importe íntegro (o importe total a reembolsar si son valores emitidos al descuento o segregados).**

1.5 Amount of income which according to paragraph 2 of Article 44 must be paid gross (or total amount to be refunded if the securities are issued at discount or are segregated).

**2. En relación con el apartado 5 del artículo 44.**

2. In relation to paragraph 5 of Article 44.

**2.1 Identificación de los valores**

2.1 Identification of the securities





**2.2 Fecha de pago de los rendimientos (o de reembolso si son valores emitidos al descuento o segregados)**

2.2 Income payment date (or refund if the securities are issued at discount or are segregated)

**2.3 Importe total de los rendimientos (o importe total a reembolsar si son valores emitidos al descuento o segregados)**

2.3 Total amount of income (or total amount to be refunded if the securities are issued at discount or are segregated)

**2.4 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero A.**

2.4 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country A.

**2.5 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero B.**

2.5 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country B.

**2.6 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero C.**

2.6 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country C.

**Lo que declaro en a de de**

I declare the above in on the of of

- (1) **En caso de personas, físicas o jurídicas, no residentes sin establecimiento permanente se hará constar el número o código de identificación que corresponda de conformidad con su país de residencia**
- (1) In case of non-residents (individuals or corporations) without permanent establishment in Spain it shall be included the number or identification code which corresponds according to their country of residence.



200FX&=8eN4g5yW5S

Exhibit 5.1

**New York  
Menlo Park  
Washington DC  
São Paulo  
London**

**Paris  
Madrid  
Tokyo  
Beijing  
Hong Kong**

# Davis Polk

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10170

(212) 450-4478 tel  
(212) 701-5800 fax

April 3, 2017

Banco Santander, S.A.  
Ciudad Grupo Santander  
Avenida de Cantabria s/n  
28660 Boadilla del Monte, Madrid, Spain

Ladies and Gentlemen:

We are acting as special United States counsel to Banco Santander, S.A., a *sociedad anónima* incorporated under the laws of The Kingdom of Spain (the “**Bank**”), in connection with the Registration Statement on Form F-3 (the “**Registration Statement**”) and the related Prospectus (the “**Prospectus**”) filed with the United States Securities and Exchange Commission by the Bank for the purpose of registering under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”), an indeterminate amount of the following securities: (i) contingent convertible capital securities to be issued by the Bank (the “**Contingent Convertible Capital Securities**”) pursuant to an indenture (the “**Contingent Convertible Capital Securities Indenture**”) to be executed by the Bank and The Bank of New York Mellon, as Trustee; (ii) ordinary senior debt securities to be issued by the Bank (the “**Ordinary Senior Debt Securities**”), pursuant to an indenture (the “**Ordinary Senior Debt Securities Indenture**”) to be executed by the Bank and The Bank of New York Mellon, as Trustee; (iii) second ranking senior debt securities to be issued by the Bank (the “**Second Ranking Senior Debt Securities**”), pursuant to an indenture (the “**Second Ranking Senior Debt Securities Indenture**”) to be executed by the Bank and The Bank of New York Mellon, as Trustee; (iv) subordinated debt securities to be issued by the Bank (the “**Subordinated Debt Securities**” and, collectively with the Contingent Convertible Capital Securities, Ordinary Senior Debt Securities and Second Ranking Senior Debt Securities, the “**Debt Securities**”), pursuant to an indenture (the “**Subordinated Debt Securities Indenture**”, and, collectively with the Contingent Convertible Capital Securities Indenture, the Ordinary Senior Debt Securities Indenture and the Second Ranking Senior Debt Securities Indenture, the “**Indentures**”) to be executed by the Bank and The Bank of New York Mellon, as Trustee; and (v) ordinary shares to be issued by the Bank in the event of any conversion of the Contingent Convertible Capital Securities. The Debt Securities and the Indentures are collectively referred to as the “**Documents**”.



200FX&=&eN3%B2Fs6

Banco Santander, S.A.

2

April 3, 2017

We, as your special United States counsel, have examined originals or copies of such documents, corporate records, certificates of public officials and other instruments as we have deemed necessary or advisable for the purpose of rendering this opinion.

In rendering the opinions expressed herein, we have, without independent inquiry or investigation, assumed that (i) all documents submitted to us as originals are authentic and complete, (ii) all documents submitted to us as copies conform to authentic, complete originals, (iii) all documents filed as exhibits to the Registration Statement that have not been executed will conform to the forms thereof, (iv) all signatures on all documents that we reviewed are genuine, (v) all natural persons executing documents had and have the legal capacity to do so, (vi) all statements in certificates of public officials and officers of the Bank that we reviewed were and are accurate and (vii) all representations made by the Bank as to matters of fact in the documents that we reviewed were and are accurate.

Based upon the foregoing, and subject to the additional assumptions and qualifications set forth below, we advise you that, in our opinion:

- 1) When the Contingent Convertible Capital Securities Indenture and any supplemental indenture to be entered into in connection with the issuance of any Contingent Convertible Capital Securities have been duly authorized, executed and delivered by the Trustee and the Bank; the specific terms of a particular series of Contingent Convertible Capital Securities have been duly authorized and established in accordance with the Contingent Convertible Capital Securities Indenture; and such Contingent Convertible Capital Securities have been duly authorized, executed, authenticated, issued and delivered in accordance with the Contingent Convertible Capital Securities Indenture and the applicable underwriting or other agreement against payment therefor, such Contingent Convertible Capital Securities will constitute valid and binding obligations of the Bank, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability, and subject to possible judicial or regulatory actions giving effect to governmental actions or foreign laws affecting creditors' rights.
- 2) When the Second Ranking Senior Debt Securities Indenture and any supplemental indenture to be entered into in connection with the issuance of any Second Ranking Senior Debt Securities have been duly authorized, executed and delivered by the Trustee and the Bank; the specific terms of a particular series of Second Ranking Senior Debt Securities have been duly authorized and established in accordance with the Second Ranking Senior Debt Securities Indenture; and such Second Ranking Senior Debt Securities have been duly authorized, executed, authenticated, issued and delivered in accordance with the Second Ranking Senior Debt Securities Indenture and the applicable underwriting or other agreement against payment therefor, such Second Ranking Senior Debt Securities will constitute valid and binding obligations of the Bank, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability, and subject to possible judicial or regulatory actions giving effect to governmental actions or foreign laws affecting creditors' rights.



200FX&=eN3%MD9s0

Banco Santander, S.A.

3

April 3, 2017

- 3) When the Ordinary Senior Debt Securities Indenture and any supplemental indenture that to be entered into in connection with the issuance of any Ordinary Senior Debt Securities have been duly authorized, executed and delivered by the Trustee and the Bank; the specific terms of a particular series of Ordinary Senior Debt Securities have been duly authorized and established in accordance with the Ordinary Senior Debt Securities Indenture; and such Ordinary Senior Debt Securities have been duly authorized, executed, authenticated, issued and delivered in accordance with the Ordinary Senior Debt Securities Indenture and the applicable underwriting or other agreement against payment therefor, such Ordinary Senior Debt Securities will constitute valid and binding obligations of the Bank, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability, and subject to possible judicial or regulatory actions giving effect to governmental actions or foreign laws affecting creditors' rights.
  
- 4) When the Subordinated Debt Securities Indenture and any supplemental indenture to be entered into in connection with the issuance of any Subordinated Debt Securities have been duly authorized, executed and delivered by the Trustee and the Bank; the specific terms of a particular series of Subordinated Debt Securities have been duly authorized and established in accordance with the Subordinated Debt Securities Indenture; and such Subordinated Debt Securities have been duly authorized, executed, authenticated, issued and delivered in accordance with the Subordinated Debt Securities Indenture and the applicable underwriting or other agreement against payment therefor, such Subordinated Debt Securities will constitute valid and binding obligations of the Bank, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability, and subject to possible judicial or regulatory actions giving effect to governmental actions or foreign laws affecting creditors' rights.

In connection with the opinions expressed above, we have assumed that at or prior to the time of the delivery of any Contingent Convertible Capital Securities, Ordinary Senior Debt Securities, Second Ranking Senior Debt Securities, or Subordinated Debt Securities, as the case may be, (i) the Board of Directors of the Bank shall have duly established the terms of the Contingent Convertible Capital Securities, the Ordinary Senior Debt Securities, the Second Ranking Senior Debt Securities, or the Subordinated Debt Securities, as the case may be, and duly authorized the issuance and sale of the Contingent Convertible Capital Securities, the Ordinary Senior Debt Securities, the Second Ranking Senior Debt Securities or the Subordinated Debt Securities, as the case may be, and such authorization shall not have been modified or rescinded; (ii) the Bank is, and shall remain, validly existing as a *sociedad anónima* incorporated under the laws of The Kingdom of Spain; (iii) the Trustee is validly existing as a corporation in good standing under the laws of its jurisdiction of incorporation; (iv) the Registration Statement shall have become effective and such effectiveness shall not have been terminated or rescinded; (v) the Indentures, the Contingent Convertible Capital Securities, the Ordinary Senior Debt Securities, the Second Ranking Senior Debt Securities and the Subordinated Debt Securities, as the case may be, are each valid, binding and enforceable agreements of each party thereto (other than as expressly covered above in respect of the Bank); and (vi) there shall not have occurred any change in law affecting the validity or enforceability of the Indentures, the Contingent Convertible Capital



Banco Santander, S.A.

4

April 3, 2017

Securities, the Ordinary Senior Debt Securities, the Second Ranking Senior Debt Securities and the Subordinated Debt Securities, as the case may be. We have also assumed that the execution, delivery and performance by the Bank of any Contingent Convertible Capital Security, Ordinary Senior Debt Security, Second Ranking Senior Debt Security or Subordinated Debt Security, as the case may be, whose terms are established subsequent to the date hereof, and the execution, delivery and performance by the Trustee of the Contingent Convertible Capital Securities Indenture, the Ordinary Senior Debt Securities Indenture, the Second Ranking Senior Debt Securities Indenture or the Subordinated Debt Securities Indenture, as the case may be, (a) are within the corporate powers of the Bank and the Trustee, (b) do not contravene, or constitute a default under, the certificate of incorporation or bylaws or other constitutive documents of the Bank or the Trustee, (c) require no action by or in respect of, or filing with, any governmental body, agency or official and (d) do not contravene, or constitute a default under, any provision of applicable law, regulation, public policy or any judgment, injunction, order or decree or any agreement or other instrument binding upon the Bank or the Trustee.

We express no opinion as to (i) the contractual provisions in the Documents relating to bail-in, (ii) any provisions in the Indentures that purport to waive objections to venue, claims that a particular jurisdiction is an inconvenient forum or the like, or (iii) the effectiveness of any service of process made other than in accordance with applicable law.

We express no opinion as to (i) whether a New York State or United States federal court would render or enforce a judgment in a currency other than U.S. Dollars or (ii) the exchange rate that such a court would use in rendering a judgment in U.S. Dollars in respect of an obligation in any other currency.

We are members of the Bar of the State of New York and the foregoing opinion is limited to the laws of the State of New York and the federal laws of the United States, except that we express no opinion as to any law, rule or regulation that is applicable to the Bank or the Documents or such transactions solely because such law, rule or regulation is part of a regulatory regime applicable to any party to any of the Documents, or any of its affiliates due to the specific assets or business of such party or such affiliate. Insofar as the foregoing opinion involves matters governed by the laws of the Kingdom of Spain, we have relied, without independent inquiry or investigation, on the opinion of Uría Menéndez, Spanish legal counsel to the Bank, dated as of April 3, 2017 to be filed as an exhibit to the Registration Statement concurrently with this opinion. Our opinion is, insofar as Spanish law is concerned, subject to the assumptions, qualifications and exceptions contained in such opinion.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement referred to above and further consent to the reference to our name under the caption "Legal Opinions" in the Prospectus. In giving this consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ Davis Polk & Wardwell LLP



URÍA  
MENÉNDEZ

Exhibit 5.2

**Banco Santander, S.A.**  
Ciudad Grupo Santander, Avenida de Cantabria s/n  
28660 Boadilla del Monte Madrid  
Spain

Madrid, April 3, 2017

Dear Sirs,

**Banco Santander, S.A. - Registration Statement on Form F-3**

We write to you as Spanish counsel to Banco Santander, S.A. (“**Banco Santander**”) for the purposes of issuing a legal opinion in connection with the preparation and filing with the United States Securities and Exchange Commission (the “**Commission**”) under the United States Securities Act of 1933, as amended, of Banco Santander’s registration statement on Form F-3 dated April 3, 2017 (the “**Registration Statement**”) relating to the offering from time to time, as set forth in the Registration Statement, of Banco Santander’s contingent convertible capital securities (the “**CoCo Notes**”), subordinated debt securities (the “**Subordinated Notes**”), second ranking senior debt securities (the “**Second Ranking Senior Notes**”) and senior debt securities (the “**Ordinary Senior Notes**”, and together with the CoCo Notes, the Subordinated Notes and the Second Ranking Senior Notes, the “**Notes**”).

**A. Documents and information reviewed**

In arriving at our opinions, we have reviewed the documents and information listed in Schedule 1.

**B. Assumptions**

Our opinions are based on the following assumptions:

- (a) All signatures, stamps and seals on the documents reviewed are genuine.
- (b) The original documents we have received are authentic and complete. Any copies we have received are complete and correspond to the originals.
- (c) The draft documents reviewed are the same as the documents that were executed, and approved.
- (d) All the parties to the Documents (other than Banco Santander) have been duly organised and validly exist, or will exist, as applicable, under the laws of their respective countries of incorporation.
- (e) All the parties (other than Banco Santander) have, or will have, the corporate power to perform the transactions and be party to the Documents and the Documents have been signed by an individual or individuals who have sufficient capacity to validly and effectively bind the parties to the same and compliance with that established in the Documents is within the legal capacity of each of the parties thereto (other than Banco Santander).



200FX&=&eN4CL1%&s.



- (f) Each person who signed or signs, as applicable, the Documents on behalf of Banco Santander had, or will have, as applicable, the legal capacity (*capacidad de obrar*) to do so at the time.
- (g) The Documents will be executed and delivered by Mr. José García Cantera, Mr. José Antonio Soler Ramos, Mr. Antonio Torío Martín, Ms. Silvana Leticia Borgatti Casale, Mr. Juan Urigoen Irusta, Mr. Óscar García Maceiras, Mr. Francisco Javier Illescas Fernández-Bermejo or Mr. Eduardo Otero Romero on behalf of Banco Santander and by each of the other parties thereto, in the form conforming to the drafts filed as exhibits to the Registration Statement.
- (h) All the documents that should have been filed with the Commercial Registry of Santander by Banco Santander had been filed and registered on or before the date of our search, and subsequent to this no other documents that bear any relation to the opinions expressed in this legal opinion have been filed or registered.

The content of the information issued electronically by the website [www.rmc.es](http://www.rmc.es) on the date of this legal opinion accurately reflects the registered information about Banco Santander.

The information held at the Commercial Registry is assumed to be correct and valid pursuant to article 7 of the Commercial Registry Rules.

- (i) The certificates reviewed are true and accurate and correspond to resolutions that have been validly approved in duly convened, constituted and quorate meetings.
- (j) The transactions contemplated in the Documents are deemed to be in Banco Santander's corporate interest (*interés social*) and Banco Santander's directors have not breached their duty of care (*deberes de diligencia y lealtad*) in relation to the transaction.
- (k) There are and there will be no contractual or other limitations that bind any of the parties and that are included in any document that we have not reviewed but that could affect this opinion, nor are there any agreements between the parties to the Documents which fully or partially annul, modify or supersede the content of the Documents.

There are and there will be no decisions or resolutions of the governing bodies of Banco Santander that revoke or amend the decisions and resolutions reviewed.

There are and there will be no factual circumstances that have not been disclosed to us and that could affect this legal opinion.

- (l) The articles of association (*estatutos sociales*) of Banco Santander that we have reviewed are those in force on the date of this legal opinion.
- (m) The Documents governed by the laws of the state of New York create legal, valid, binding and enforceable obligations for each party to the Documents under such laws.
- (n) The obligations deriving from the Documents that must be complied with in a jurisdiction other than Spain, or that could be affected in any way by the laws of such other jurisdiction, will not be invalid or ineffective by virtue of the said laws, or contrary to its public policy.



- (o) The aggregate principal amount of Notes (other than the CoCo Notes) to be issued pursuant to any Indenture and any supplemental indenture thereto does not exceed and will not exceed the maximum aggregate principal amount of Notes (other than the CoCo Notes) authorized to be issued by Banco Santander, from time to time.
- (p) The aggregate principal amount of the CoCo Notes to be issued pursuant to any CoCo Indenture and any supplemental indenture thereto does not exceed and will not exceed the maximum aggregate principal amount of CoCo Notes authorized to be issued by Banco Santander, from time to time.
- (q) The aggregate principal amount of ordinary shares (*acciones*) to be issued upon conversion (if applicable) of the CoCo Notes does not exceed and will not exceed the maximum aggregate principal amount of ordinary shares authorized to be issued by Banco Santander, from time to time.
- (r) The Notes will be issued, executed, paid and delivered pursuant to the terms of the Indentures.
- (s) With respect to any series of Notes, a public deed of issuance (*escritura de emisión*) will be executed and registered with the Commercial Registry.
- (t) With respect to any series of CoCo Notes, (i) the resolution of the general shareholders meeting of Banco Santander and, in case of delegation, of the board of directors and/ or executive committee of Banco Santander approving the issuance will comply with article 414 of the Spanish Corporate Law and concordant articles; (ii) the securities will not be issued for an amount lower than their face value (*valor nominal*) and will not be convertible into ordinary shares of Banco Santander when their face value is below the ordinary shares' face value; and (iii) the shareholders pre-emptive rights will be observed (in accordance with art. 416 of the Spanish Corporate Act and concordant articles) or, if suppressed, that suppression will be done in accordance with article 417 and 511 of the Spanish Corporate Law.
- (u) With respect to the issuance of ordinary shares of Banco Santander upon the conversion of the CoCo Notes, if applicable, the following will take place: (i) the formalisation of the capital increase by means of a public deed of issuance of the shares granted before a Spanish notary public, the filing thereof together with the relevant tax form relating to the transfer tax (*Impuesto de Transmisiones Patrimoniales y Actos Jurídicos Documentados*) by Banco Santander with the competent Spanish tax authorities and the registration of such public deed with the Commercial Registry of Cantabria, (ii) the registration of the shares with the *Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.U.*, (iii) the positive verification of the listing of the shares on the Spanish Stock Exchanges by the Spanish Securities and Exchange Commission (*Comisión Nacional del Mercado de Valores*) ("**CNMV**"), (iv) the approval of the listing of the shares by the managing entities (*Sociedades Rectoras*) of each of the Spanish Stock Exchanges where Banco Santander's shares are listed, and (v) the approval of the admission of the shares to trading on the Spanish Automated Quotation System - Continuous Market (*Sistema de Interconexión Bursátil – Mercado Continuo*) by the CNMV.





Where we have not independently verified facts material to the opinions, we have examined and relied on certificates issued by duly authorized representatives of Banco Santander.

**C. Opinion**

We do not represent ourselves to be familiar with the laws of any jurisdiction other than Spain as they stand at present and therefore express no opinion on matters arising under any laws other than the laws of Spain currently in force. This legal opinion is issued on the basis that all related-matters will be governed by, and construed in accordance with Spanish law, and that all matters between the addressees of this legal opinion and ourselves (in particular, those regarding interpretation) will be brought before the Spanish courts.

Our involvement in the transaction described has been limited to our role as Spanish counsel to Banco Santander, and we therefore assume no obligation to advise any other party to the transaction. Furthermore, we assume no obligation to advise Banco Santander or any other party of any changes to the law or facts that may occur after today's date, regardless of whether they affect the legal analysis or conclusions in this legal opinion.

Legal concepts are expressed in the documents in English terms and may not be identical or equivalent to the Spanish legal terms used.

Based on the above, and subject to the additional exceptions, limitations and qualifications set out below, it is our opinion that:

1. Valid existence

Banco Santander was duly incorporated and validly exists as a "*sociedad anónima*" under the laws of Spain.

2. Corporate power

Banco Santander has the necessary corporate power to authorize, execute and deliver the Notes and the Indentures.

3. Due authorization

When the issuance of Notes of a new series by Banco Santander has been duly authorized by the general shareholders' meeting and/or the competent governing bodies of Banco Santander, the issue of the Notes of such series will be duly authorized by Banco Santander.

4. Issuance of ordinary shares of Banco Santander upon conversion of the Coco Notes

Upon conversion of duly authorized and issued CoCo Notes in accordance with the terms of the Coco Indenture, the issuance of the ordinary shares of Banco Santander to be delivered as a consequence of such conversion, when duly authorized by the competent governing body of Banco Santander, will be duly authorized and validly issued, fully paid and non-assessable.



5. Choice of law

The choice of NY law as the governing law of the Indentures and the terms and conditions of the Notes as described therein is valid and should be recognized and enforced by the Spanish courts subject to the terms of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

Effect being given to this choice of law in court is subject to the NY law being evidenced to the Spanish courts pursuant to article 281 of the Spanish Civil Procedure Law and taking into account the contents of article 33 of Law 29/2015.

**D. Qualifications**

The opinions above are subject to the following:

- (i) Our opinion is issued subject to the effects and outcome of transactions that may derive from insolvency, the recovery and resolution proceedings of credit institutions, pre-insolvency mechanisms or any other similar proceedings that generally affect the rights of all or some creditors, including those that do not fall under judicial insolvency proceedings (in particular, but not limited to, transactions that may derive from articles 5 bis, 71 and 71 bis, and the fourth additional provision of the Insolvency Law), as well as to any principles of public policy (*orden público*).
- (ii) The choice of NY law as the governing law of the Indentures and the terms and conditions of the Notes will not restrict the application of the Spanish “overriding mandatory provisions”, as defined in Article 9.1 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

Furthermore, Spanish courts may refuse to apply a provision of the chosen law if such application is manifestly incompatible with Spanish public policy. Spanish courts may also give effect to the overriding mandatory provisions of the law of the country in which the obligations arising from the Documents have been performed or must be performed.

- (iii) The information available from the website [www.rmc.es](http://www.rmc.es) may not be entirely accurate or up to date.

This opinion letter is rendered to the addressee identified in this letter and in connection with the transactions described above.

Without prejudice the foregoing, we hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name under the caption “Legal Opinions” in the prospectus included in the Registration Statement. In giving this consent, we do not admit that we are experts under the Securities Act or the rules and regulations of the Commission issued thereunder with respect to any part of the Registration Statement, including this opinion.



**URÍA**  
**MENÉNDEZ**

Exhibit 5.2

This opinion shall be governed exclusively by Spanish law and the courts of the city of Madrid (Spain) shall have exclusive jurisdiction to settle any dispute relating to this opinion.

Very truly yours,

/s/ Luis Acuña

Luis Acuña



200FX&amp;=&amp;eN3SjGgss

BANCO SANTANDER, S.A

Donnelley Financial

VDI-W7-PR3-0561  
12.1.14

ADG l unaa l ma

01-Apr-2017 02:45 EST

353001 EX5 2 7 3\*

FORM F-3

NYC

ex52logo

HTM ESS 0C

Page 1 of 1

URÍA  
MENÉNDEZ

Exhibit 5.2

**Schedule 1.- Documents and information reviewed**

- (a) A copy of the Registration Statement;
- (b) a copy of the form of indenture to be entered into by Banco Santander and The Bank of New York Mellon regarding the issuance of CoCo Notes (the “**CoCo Indenture**”);
- (c) a copy of the form of indenture to be entered into by Banco Santander and The Bank of New York Mellon regarding the issuance of Subordinated Notes (the “**Subordinated Indenture**”);
- (d) a copy of the form of indenture to be entered into by Banco Santander and The Bank of New York Mellon regarding the issuance of Second Ranking Senior Notes (the “**Second Ranking Senior Indenture**”);
- (e) a copy of the form of indenture to be entered into by Banco Santander and The Bank of New York Mellon regarding the issuance of the Ordinary Senior Notes (the “**Ordinary Senior Indenture**”, and together the CoCo Indenture, the Subordinated Indenture and the Second Ranking Indenture, the “**Indentures**”);
- (f) a copy of the articles of association (*estatutos*) of Banco Santander, as publicly available at the web page of Banco Santander ([www.santander.com](http://www.santander.com)) on 3 April 2017;
- (g) the information publicly available on the website of the Spanish Central Commercial Registry ([www.rmc.es](http://www.rmc.es)) with respect to the corporate entries of Banco Santander on 3 April 2017;
- (h) a copy of a certificate dated 11 April 2016 of (i) the resolution of the General Shareholders’ Meeting of Banco Santander held on 18 March 2016 authorising the Board of Directors, among others, to issue debt, and (ii) the resolutions adopted by the Board of Directors of Banco Santander on 18 March 2016 granting on the Executive Committee, among others, the faculty to issue debt;
- (i) a copy of a certificate dated 24 March 2017 of (i) the resolution of the General Shareholders’ Meeting of Banco Santander held on 27 March 2015 authorising the Board of Directors, among others, to issue convertible debt, and (ii) the resolutions adopted by the Board of Directors of Banco Santander on 27 March 2015 granting on the Executive Committee, among others, the faculty to issue convertible debt; and
- (j) a copy of a certificate dated 28 March 2017 of the resolutions adopted by the Executive Committee of Banco Santander on 27 March 2017 approving, among other, the filing and registration of the Registration Statement required to issue the Notes and the execution of the documents to which Banco Santander it is a party in connection thereto.

The Indentures and the Notes will be hereinafter collectively referred to as the “**Documents**”.



Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form F-3 of our report dated March 31, 2017 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in Banco Santander, S.A.'s Annual Report on Form 20-F for the year ended December 31, 2016. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers Auditores, S.L.  
Madrid, Spain  
April 3, 2017



200FX&=&eNJFt0JLl

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement on Form F-3 of our report dated April 20, 2016 (March 31, 2017 as to the effects of the change in Banco Santander, S.A.'s accounting policy on cash and cash equivalents and the retrospective adjustment of the consolidated statements of cash flows for the years ended December 31, 2015 and 2014 discussed in Note 1.d), relating to the consolidated financial statements as of and for the years ended December 31, 2015 and 2014 of Banco Santander, S.A. (the "Bank") and Companies composing, together with the Bank, the Santander Group (the "Group"), appearing in the Annual Report on Form 20-F of the Group for the year ended December 31, 2016, and to the reference to us under the heading "Experts" in the Prospectus, which is part of this Registration Statement.

/s/ DELOITTE, S.L.

Madrid, Spain

April 3, 2017



200FX&=8eN4gn@!L"

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM T-1**

**STATEMENT OF ELIGIBILITY  
UNDER THE TRUST INDENTURE ACT OF 1939  
OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE**

**CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO SECTION 305(b)(2)**

**The Bank of New York Mellon**

(Exact name of trustee as specified in its charter)

**New York**  
(Jurisdiction of incorporation  
if not a U.S. national bank)

**13-5160382**  
(I.R.S. Employer  
Identification No.)

**225 Liberty Street**  
**New York, New York**  
(Address of principal executive offices)

**10286**  
(Zip code)

**Legal Department**  
**The Bank of New York Mellon**  
**225 Liberty Street**  
**New York, NY 10286**  
**(212) 635-1270**

(Name, address and telephone number of agent for service)

**Banco Santander, S.A.**  
(Exact name of obligor as specified in its charter)

**Kingdom of Spain**  
(State or other jurisdiction of  
incorporation or organization)

**Not Applicable**  
(I.R.S. Employer  
Identification No.)

**Ciudad Grupo Santander,**  
**28660 Boadilla del Monte (Madrid), Spain**  
(Address of principal executive offices)

**Not Applicable**  
(Zip code)

**Ordinary Senior Debt Securities**  
(Title of the indenture securities)



**Item 1. General Information.**

Furnish the following information as to the Trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

Superintendent of the Department of Financial Services of the State of New York	One State Street, New York, N.Y. 10004-1417 and Albany, N.Y. 12203
Federal Reserve Bank of New York	33 Liberty Plaza, New York, N.Y. 10045
Federal Deposit Insurance Corporation	550 17th Street, N.W., Washington, D.C. 20429
New York Clearing House Association	New York, N.Y. 10005

- (b) Whether it is authorized to exercise corporate trust powers.

Yes.

**Item 2. Affiliations with Obligor.**

If the obligor is an affiliate of the trustee, describe each such affiliation.

None.

**Item 16. List of Exhibits.**

Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the "Act") and 17 C.F.R. 229.10(d).

1. - A copy of the Organization Certificate of The Bank of New York Mellon (formerly known as The Bank of New York, formerly known as Irving Trust Company) as now in effect, which contains the authority to commence business and a grant of powers to exercise corporate trust powers. (Exhibit 1 to Amendment No. 1 to Form T-1 filed with Registration Statement No. 33-6215, Exhibits 1a and 1b to Form T-1 filed with Registration Statement No. 33-21672, Exhibit 1 to Form T-1 filed with Registration Statement No. 33-29637, Exhibit 1 to Form T-1 filed with Registration Statement No. 333-121195 and Exhibit 1 to Form T-1 filed as Exhibit 25.1 to Current Report on Form 8-K of Nevada Power Company, Date of Report (Date of Earliest Event Reported) July 25, 2008 (File No. 000-52378).)
4. - A copy of the existing By-laws of the Trustee. (Exhibit 4 to Form T-1 with Registration Statement No. 333-155238.)
6. - The consent of the Trustee required by Section 321(b) of the Act. (Exhibit 6 to Form T-1 filed with Registration Statement No. 333-152856.)
7. - A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.





**SIGNATURE**

Pursuant to the requirements of the Act, the Trustee, The Bank of New York Mellon, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in London, England on the 31<sup>st</sup> day of March, 2017.

**THE BANK OF NEW YORK MELLON**

By: /s/ Marco Thuo \_\_\_\_\_  
Name: Marco Thuo  
Title: Vice President



Consolidated Report of Condition of  
 THE BANK OF NEW YORK MELLON  
 of 225 Liberty Street, New York, N.Y. 10286  
 And Foreign and Domestic Subsidiaries,

a member of the Federal Reserve System, at the close of business December 31, 2016, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act.

Dollar amounts in thousands

<b>ASSETS</b>	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coin	\$ 4,245,000
Interest-bearing balances	69,260,000
Securities:	
Held-to-maturity securities	39,852,000
Available-for-sale securities	68,602,000
Federal funds sold and securities purchased under agreements to resell:	
Federal funds sold in domestic offices	0
Securities purchased under agreements to resell	14,616,000
Loans and lease financing receivables:	
Loans and leases held for sale	0
Loans and leases, net of unearned income	33,868,000
LESS: Allowance for loan and lease losses	143,000
Loans and leases, net of unearned income and allowance	33,725,000
Trading assets	3,439,000
Premises and fixed assets (including capitalized leases)	1,053,000
Other real estate owned	4,000
Investments in unconsolidated subsidiaries and associated companies	515,000
Direct and indirect investments in real estate ventures	0
Intangible assets:	
Goodwill	6,244,000
Other intangible assets	927,000
Other assets	15,094,000
<b>Total assets</b>	<b>257,576,000</b>



EXHIBIT 7  
(Page ii of iii)

**LIABILITIES**

Deposits:

In domestic offices	\$110,284,000
Noninterest-bearing	69,903,000
Interest-bearing	40,381,000
In foreign offices, Edge and Agreement subsidiaries, and IBFs	102,533,000
Noninterest-bearing	7,872,000
Interest-bearing	94,661,000
Federal funds purchased and securities sold under agreements to repurchase:	
Federal funds purchased in domestic offices	152,000
Securities sold under agreements to repurchase	2,392,000
Trading liabilities	3,747,000
Other borrowed money:	
(includes mortgage indebtedness and obligations under capitalized leases)	7,066,000
Not applicable	
Not applicable	
Subordinated notes and debentures	515,000
Other liabilities	6,489,000
<b>Total liabilities</b>	<u><u>233,178,000</u></u>

**EQUITY CAPITAL**

Perpetual preferred stock and related surplus	0
Common stock	1,135,000
Surplus (exclude all surplus related to preferred stock)	10,516,000
Retained earnings	14,417,000
Accumulated other comprehensive income	-2,020,000
Other equity capital components	0
<b>Total bank equity capital</b>	24,048,000
Noncontrolling (minority) interests in consolidated subsidiaries	350,000
<b>Total equity capital</b>	24,398,000
<b>Total liabilities and equity capital</b>	<u><u>257,576,000</u></u>



200FX&=&eN52%Z%&s-

EXHIBIT 7  
(Page iii of iii)

I, Thomas P. Gibbons, Chief Financial Officer of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

Thomas P. Gibbons,  
Chief Financial Officer

We, the undersigned directors, attest to the correctness of this statement of resources and liabilities. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

Gerald L. Hassell  
Catherine A. Rein  
Joseph J. Echevarria

]

Directors



**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM T-1**

**STATEMENT OF ELIGIBILITY  
UNDER THE TRUST INDENTURE ACT OF 1939  
OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE**

**CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO SECTION 305(b)(2)**

**The Bank of New York Mellon**

(Exact name of trustee as specified in its charter)

**New York**  
(Jurisdiction of incorporation  
if not a U.S. national bank)

**13-5160382**  
(I.R.S. Employer  
Identification No.)

**225 Liberty Street**  
**New York, New York**  
(Address of principal executive offices)

**10286**  
(Zip code)

**Legal Department**  
**The Bank of New York Mellon**  
**225 Liberty Street**  
**New York, NY 10286**  
**(212) 635-1270**

(Name, address and telephone number of agent for service)

**Banco Santander, S.A.**  
(Exact name of obligor as specified in its charter)

**Kingdom of Spain**  
(State or other jurisdiction of  
incorporation or organization)

**Not Applicable**  
(I.R.S. Employer  
Identification No.)

**Ciudad Grupo Santander,**  
**28660 Boadilla del Monte (Madrid), Spain**  
(Address of principal executive offices)

**Not Applicable**  
(Zip code)

**Second Ranking Senior Debt Securities**  
(Title of the indenture securities)



**Item 1. General Information.**

Furnish the following information as to the Trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

Superintendent of the Department of Financial Services of the State of New York Federal Reserve Bank of New York Federal Deposit Insurance Corporation New York Clearing House Association	One State Street, New York, N.Y. 10004-1417 and Albany, N.Y. 12203 33 Liberty Plaza, New York, N.Y. 10045 550 17th Street, N.W., Washington, D.C. 20429 New York, N.Y. 10005
--	--

- (b) Whether it is authorized to exercise corporate trust powers.

Yes.

**Item 2. Affiliations with Obligor.**

If the obligor is an affiliate of the trustee, describe each such affiliation.

None.

**Item 16. List of Exhibits.**

Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the "Act") and 17 C.F.R. 229.10(d).

1. - A copy of the Organization Certificate of The Bank of New York Mellon (formerly known as The Bank of New York, formerly known as Irving Trust Company) as now in effect, which contains the authority to commence business and a grant of powers to exercise corporate trust powers. (Exhibit 1 to Amendment No. 1 to Form T-1 filed with Registration Statement No. 33-6215, Exhibits 1a and 1b to Form T-1 filed with Registration Statement No. 33-21672, Exhibit 1 to Form T-1 filed with Registration Statement No. 33-29637, Exhibit 1 to Form T-1 filed with Registration Statement No. 333-121195 and Exhibit 1 to Form T-1 filed as Exhibit 25.1 to Current Report on Form 8-K of Nevada Power Company, Date of Report (Date of Earliest Event Reported) July 25, 2008 (File No. 000-52378).)
4. - A copy of the existing By-laws of the Trustee. (Exhibit 4 to Form T-1 with Registration Statement No. 333-155238.)
6. - The consent of the Trustee required by Section 321(b) of the Act. (Exhibit 6 to Form T-1 filed with Registration Statement No. 333-152856.)
7. - A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.



200FX&=&eN58eMRsQ

**SIGNATURE**

Pursuant to the requirements of the Act, the Trustee, The Bank of New York Mellon, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in London, England, on the 31<sup>st</sup> day of March, 2017.

**THE BANK OF NEW YORK MELLON**

By: /s/ Marco Thuo \_\_\_\_\_  
Name: Marco Thuo  
Title: Vice President



Consolidated Report of Condition of

THE BANK OF NEW YORK MELLON

of 225 Liberty Street, New York, N.Y. 10286  
And Foreign and Domestic Subsidiaries,

a member of the Federal Reserve System, at the close of business December 31, 2016, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act.

Dollar amounts in thousands

<b>ASSETS</b>	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coin	\$ 4,245,000
Interest-bearing balances	69,260,000
Securities:	
Held-to-maturity securities	39,852,000
Available-for-sale securities	68,602,000
Federal funds sold and securities purchased under agreements to resell:	
Federal funds sold in domestic offices	0
Securities purchased under agreements to resell	14,616,000
Loans and lease financing receivables:	
Loans and leases held for sale	0
Loans and leases, net of unearned income	33,868,000
LESS: Allowance for loan and lease losses	143,000
Loans and leases, net of unearned income and allowance	33,725,000
Trading assets	3,439,000
Premises and fixed assets (including capitalized leases)	1,053,000
Other real estate owned	4,000
Investments in unconsolidated subsidiaries and associated companies	515,000
Direct and indirect investments in real estate ventures	0
Intangible assets:	
Goodwill	6,244,000
Other intangible assets	927,000
Other assets	15,094,000
<b>Total assets</b>	<b>257,576,000</b>





EXHIBIT 7  
(Page ii of iii)

**LIABILITIES**

Deposits:

In domestic offices	\$110,284,000
Noninterest-bearing	69,903,000
Interest-bearing	40,381,000
In foreign offices, Edge and Agreement subsidiaries, and IBFs	102,533,000
Noninterest-bearing	7,872,000
Interest-bearing	94,661,000
Federal funds purchased and securities sold under agreements to repurchase:	
Federal funds purchased in domestic offices	152,000
Securities sold under agreements to repurchase	2,392,000
Trading liabilities	3,747,000
Other borrowed money:	
(includes mortgage indebtedness and obligations under capitalized leases)	7,066,000
Not applicable	
Not applicable	
Subordinated notes and debentures	515,000
Other liabilities	6,489,000
<b>Total liabilities</b>	<b><u>233,178,000</u></b>

**EQUITY CAPITAL**

Perpetual preferred stock and related surplus	0
Common stock	1,135,000
Surplus (exclude all surplus related to preferred stock)	10,516,000
Retained earnings	14,417,000
Accumulated other comprehensive income	-2,020,000
Other equity capital components	0
<b>Total bank equity capital</b>	<b>24,048,000</b>
Noncontrolling (minority) interests in consolidated subsidiaries	350,000
<b>Total equity capital</b>	<b><u>24,398,000</u></b>
<b>Total liabilities and equity capital</b>	<b><u>257,576,000</u></b>



200FX&=&eN5joVtLf

EXHIBIT 7  
(Page iii of iii)

I, Thomas P. Gibbons, Chief Financial Officer of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

Thomas P. Gibbons,  
Chief Financial Officer

We, the undersigned directors, attest to the correctness of this statement of resources and liabilities. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

Gerald L. Hassell  
Catherine A. Rein  
Joseph J. Echevarria

]

Directors



---

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

---

**FORM T-1**

---

**STATEMENT OF ELIGIBILITY  
UNDER THE TRUST INDENTURE ACT OF 1939  
OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE**

**CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO SECTION 305(b)(2)**

---

**The Bank of New York Mellon**

(Exact name of trustee as specified in its charter)

---

**New York**  
(Jurisdiction of incorporation  
if not a U.S. national bank)

**13-5160382**  
(I.R.S. Employer  
Identification No.)

**225 Liberty Street**  
**New York, New York**  
(Address of principal executive offices)

**10286**  
(Zip code)

**Legal Department**  
**The Bank of New York Mellon**  
**225 Liberty Street**  
**New York, NY 10286**  
**(212) 635-1270**

(Name, address and telephone number of agent for service)

---

**Banco Santander, S.A.**  
(Exact name of obligor as specified in its charter)

---

**Kingdom of Spain**  
(State or other jurisdiction of  
incorporation or organization)

**Not Applicable**  
(I.R.S. Employer  
Identification No.)

**Ciudad Grupo Santander,**  
**28660 Boadilla del Monte (Madrid), Spain**  
(Address of principal executive offices)

**Not Applicable**  
(Zip code)

---

**Subordinated Debt Securities**  
(Title of the indenture securities)

---

---



**Item 1. General Information.**

Furnish the following information as to the Trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

Superintendent of the Department of Financial Services of the State of New York	One State Street, New York, N.Y. 10004-1417 and Albany, N.Y. 12203
Federal Reserve Bank of New York	33 Liberty Plaza, New York, N.Y. 10045
Federal Deposit Insurance Corporation	550 17th Street, N.W., Washington, D.C. 20429
New York Clearing House Association	New York, N.Y. 10005

- (b) Whether it is authorized to exercise corporate trust powers.

Yes.

**Item 2. Affiliations with Obligor.**

If the obligor is an affiliate of the trustee, describe each such affiliation.

None.

**Item 16. List of Exhibits.**

Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the "Act") and 17 C.F.R. 229.10(d).

1. - A copy of the Organization Certificate of The Bank of New York Mellon (formerly known as The Bank of New York, formerly known as Irving Trust Company) as now in effect, which contains the authority to commence business and a grant of powers to exercise corporate trust powers. (Exhibit 1 to Amendment No. 1 to Form T-1 filed with Registration Statement No. 33-6215, Exhibits 1a and 1b to Form T-1 filed with Registration Statement No. 33-21672, Exhibit 1 to Form T-1 filed with Registration Statement No. 33-29637, Exhibit 1 to Form T-1 filed with Registration Statement No. 333-121195 and Exhibit 1 to Form T-1 filed as Exhibit 25.1 to Current Report on Form 8-K of Nevada Power Company, Date of Report (Date of Earliest Event Reported) July 25, 2008 (File No. 000-52378).)
4. - A copy of the existing By-laws of the Trustee. (Exhibit 4 to Form T-1 with Registration Statement No. 333-155238.)
6. - The consent of the Trustee required by Section 321(b) of the Act. (Exhibit 6 to Form T-1 filed with Registration Statement No. 333-152856.)
7. - A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.



200FX&=8eN4Yhu3LO

**SIGNATURE**

Pursuant to the requirements of the Act, the Trustee, The Bank of New York Mellon, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in London, England on the 31<sup>st</sup> day of March, 2017.

**THE BANK OF NEW YORK MELLON**

By: /s/ Marco Thuo \_\_\_\_\_  
Name: Marco Thuo  
Title: Vice President



Consolidated Report of Condition of

THE BANK OF NEW YORK MELLON

of 225 Liberty Street, New York, N.Y. 10286  
And Foreign and Domestic Subsidiaries,

a member of the Federal Reserve System, at the close of business December 31, 2016, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act.

Dollar amounts in thousands

<b>ASSETS</b>	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coin	\$ 4,245,000
Interest-bearing balances	69,260,000
Securities:	
Held-to-maturity securities	39,852,000
Available-for-sale securities	68,602,000
Federal funds sold and securities purchased under agreements to resell:	
Federal funds sold in domestic offices	0
Securities purchased under agreements to resell	14,616,000
Loans and lease financing receivables:	
Loans and leases held for sale	0
Loans and leases, net of unearned income	33,868,000
LESS: Allowance for loan and lease losses	143,000
Loans and leases, net of unearned income and allowance	33,725,000
Trading assets	3,439,000
Premises and fixed assets (including capitalized leases)	1,053,000
Other real estate owned	4,000
Investments in unconsolidated subsidiaries and associated companies	515,000
Direct and indirect investments in real estate ventures	0
Intangible assets:	
Goodwill	6,244,000
Other intangible assets	927,000
Other assets	15,094,000
<b>Total assets</b>	<b>257,576,000</b>



EXHIBIT 7  
(Page ii of iii)

**LIABILITIES**

Deposits:

In domestic offices	\$110,284,000
Noninterest-bearing	69,903,000
Interest-bearing	40,381,000
In foreign offices, Edge and Agreement subsidiaries, and IBFs	102,533,000
Noninterest-bearing	7,872,000
Interest-bearing	94,661,000
Federal funds purchased and securities sold under agreements to repurchase:	
Federal funds purchased in domestic offices	152,000
Securities sold under agreements to repurchase	2,392,000
Trading liabilities	3,747,000
Other borrowed money: (includes mortgage indebtedness and obligations under capitalized leases)	7,066,000
Not applicable	
Not applicable	
Subordinated notes and debentures	515,000
Other liabilities	6,489,000
Total liabilities	<u>233,178,000</u>

**EQUITY CAPITAL**

Perpetual preferred stock and related surplus	0
Common stock	1,135,000
Surplus (exclude all surplus related to preferred stock)	10,516,000
Retained earnings	14,417,000
Accumulated other comprehensive income	-2,020,000
Other equity capital components	0
Total bank equity capital	24,048,000
Noncontrolling (minority) interests in consolidated subsidiaries	350,000
Total equity capital	<u>24,398,000</u>
Total liabilities and equity capital	<u><u>257,576,000</u></u>



EXHIBIT 7  
(Page iii of iii)

I, Thomas P. Gibbons, Chief Financial Officer of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

Thomas P. Gibbons,  
Chief Financial Officer

We, the undersigned directors, attest to the correctness of this statement of resources and liabilities. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

Gerald L. Hassell  
Catherine A. Rein  
Joseph J. Echevarria

]

Directors





**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM T-1**

**STATEMENT OF ELIGIBILITY  
UNDER THE TRUST INDENTURE ACT OF 1939  
OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE**

**CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO SECTION 305(b)(2)**

**The Bank of New York Mellon**

(Exact name of trustee as specified in its charter)

**New York**  
(Jurisdiction of incorporation  
if not a U.S. national bank)

**13-5160382**  
(I.R.S. Employer  
Identification No.)

**225 Liberty Street**  
**New York, New York**  
(Address of principal executive offices)

**10286**  
(Zip code)

**Legal Department**  
**The Bank of New York Mellon**  
**225 Liberty Street**  
**New York, NY 10286**  
**(212) 635-1270**

(Name, address and telephone number of agent for service)

**Banco Santander, S.A.**  
(Exact name of obligor as specified in its charter)

**Kingdom of Spain**  
(State or other jurisdiction of  
incorporation or organization)

**Not Applicable**  
(I.R.S. Employer  
Identification No.)

**Ciudad Grupo Santander,**  
**28660 Boadilla del Monte (Madrid), Spain**  
(Address of principal executive offices)

**Not Applicable**  
(Zip code)

**Contingent Convertible Capital Securities**  
(Title of the indenture securities)



**Item 1. General Information.**

Furnish the following information as to the Trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

Superintendent of the Department of Financial Services of the State of New York	One State Street, New York, N.Y. 10004-1417 and Albany, N.Y. 12203
Federal Reserve Bank of New York	33 Liberty Plaza, New York, N.Y. 10045
Federal Deposit Insurance Corporation	550 17th Street, N.W., Washington, D.C. 20429
New York Clearing House Association	New York, N.Y. 10005

- (b) Whether it is authorized to exercise corporate trust powers.

Yes.

**Item 2. Affiliations with Obligor.**

If the obligor is an affiliate of the trustee, describe each such affiliation.

None.

**Item 16. List of Exhibits.**

Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the "Act") and 17 C.F.R. 229.10(d).

1. - A copy of the Organization Certificate of The Bank of New York Mellon (formerly known as The Bank of New York, formerly known as Irving Trust Company) as now in effect, which contains the authority to commence business and a grant of powers to exercise corporate trust powers. (Exhibit 1 to Amendment No. 1 to Form T-1 filed with Registration Statement No. 33-6215, Exhibits 1a and 1b to Form T-1 filed with Registration Statement No. 33-21672, Exhibit 1 to Form T-1 filed with Registration Statement No. 33-29637, Exhibit 1 to Form T-1 filed with Registration Statement No. 333-121195 and Exhibit 1 to Form T-1 filed as Exhibit 25.1 to Current Report on Form 8-K of Nevada Power Company, Date of Report (Date of Earliest Event Reported) July 25, 2008 (File No. 000-52378).)
4. - A copy of the existing By-laws of the Trustee. (Exhibit 4 to Form T-1 with Registration Statement No. 333-155238.)
6. - The consent of the Trustee required by Section 321(b) of the Act. (Exhibit 6 to Form T-1 filed with Registration Statement No. 333-152856.)
7. - A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.



200FX&=&eN4Y70XL=

**SIGNATURE**

Pursuant to the requirements of the Act, the Trustee, The Bank of New York Mellon, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in London, England, on the 31<sup>st</sup> day of March, 2017.

**THE BANK OF NEW YORK MELLON**

By: /s/ Marco Thuo \_\_\_\_\_  
Name: Marco Thuo  
Title: Vice President



Consolidated Report of Condition of

THE BANK OF NEW YORK MELLON

of 225 Liberty Street, New York, N.Y. 10286  
And Foreign and Domestic Subsidiaries,

a member of the Federal Reserve System, at the close of business December 31, 2016, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act.

Dollar amounts in thousands

<b>ASSETS</b>	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coin	\$ 4,245,000
Interest-bearing balances	69,260,000
Securities:	
Held-to-maturity securities	39,852,000
Available-for-sale securities	68,602,000
Federal funds sold and securities purchased under agreements to resell:	
Federal funds sold in domestic offices	0
Securities purchased under agreements to resell	14,616,000
Loans and lease financing receivables:	
Loans and leases held for sale	0
Loans and leases, net of unearned income	33,868,000
LESS: Allowance for loan and lease losses	143,000
Loans and leases, net of unearned income and allowance	33,725,000
Trading assets	3,439,000
Premises and fixed assets (including capitalized leases)	1,053,000
Other real estate owned	4,000
Investments in unconsolidated subsidiaries and associated companies	515,000
Direct and indirect investments in real estate ventures	0
Intangible assets:	
Goodwill	6,244,000
Other intangible assets	927,000
Other assets	15,094,000
<b>Total assets</b>	<b>257,576,000</b>



**LIABILITIES**

Deposits:

In domestic offices	\$110,284,000
Noninterest-bearing	69,903,000
Interest-bearing	40,381,000
In foreign offices, Edge and Agreement subsidiaries, and IBFs	102,533,000
Noninterest-bearing	7,872,000
Interest-bearing	94,661,000

Federal funds purchased and securities sold under agreements to repurchase:

Federal funds purchased in domestic offices	152,000
Securities sold under agreements to repurchase	2,392,000

Trading liabilities	3,747,000
---------------------	-----------

Other borrowed money:

(includes mortgage indebtedness and obligations under capitalized leases)	7,066,000
---	-----------

Not applicable

Not applicable

Subordinated notes and debentures	515,000
-----------------------------------	---------

Other liabilities	6,489,000
-------------------	-----------

<b>Total liabilities</b>	<b><u>233,178,000</u></b>
--------------------------	---------------------------

**EQUITY CAPITAL**

Perpetual preferred stock and related surplus	0
---	---

Common stock	1,135,000
--------------	-----------

Surplus (exclude all surplus related to preferred stock)	10,516,000
--	------------

Retained earnings	14,417,000
-------------------	------------

Accumulated other comprehensive income	-2,020,000
--	------------

Other equity capital components	0
---------------------------------	---

<b>Total bank equity capital</b>	<b>24,048,000</b>
----------------------------------	-------------------

Noncontrolling (minority) interests in consolidated subsidiaries	350,000
--	---------

<b>Total equity capital</b>	<b><u>24,398,000</u></b>
-----------------------------	--------------------------

<b>Total liabilities and equity capital</b>	<b><u><u>257,576,000</u></u></b>
---	----------------------------------



EXHIBIT 7  
(Page iii of iii)

I, Thomas P. Gibbons, Chief Financial Officer of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

Thomas P. Gibbons,  
Chief Financial Officer

We, the undersigned directors, attest to the correctness of this statement of resources and liabilities. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

Gerald L. Hassell  
Catherine A. Rein  
Joseph J. Echevarria



Directors



EXHIBIT 99.1

**Anexo al Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos, aprobado por Real Decreto 1065/2007**

**Modelo de declaración a que se refieren los apartados 3, 4 y 5 del artículo 44 del Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos**

Annex to Royal Decree 1065/2007, of 27 July, approving the General Regulations of the tax inspection and management procedures and developing the common rules of the procedures to apply taxes

Declaration form referred to in paragraphs 3, 4 and 5 of Article 44 of the General Regulations of the tax inspection and management procedures and developing the common rules of the procedures to apply taxes

**Don (nombre), con número de identificación fiscal ( )<sup>(1)</sup>, en nombre y representación de (entidad declarante), con número de identificación fiscal ( )<sup>(1)</sup> y domicilio en ( ) en calidad de (marcar la letra que proceda):**

Mr. (name), with tax identification number ( )<sup>(1)</sup>, in the name and on behalf of (entity), with tax identification number ( )<sup>(1)</sup> and address in ( ) as (function - mark as applicable):

**(a) Entidad Gestora del Mercado de Deuda Pública en Anotaciones.**

(a) Management Entity of the Public Debt Market in book entry form.

**(b) Entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero.**

(b) Entity that manages the clearing and settlement system of securities resident in a foreign country.

**(c) Otras entidades que mantienen valores por cuenta de terceros en entidades de compensación y liquidación de valores domiciliadas en territorio español.**

(c) Other entities that hold securities on behalf of third parties within clearing and settlement systems domiciled in the Spanish territory.

**(d) Agente de pagos designado por el emisor.**

(d) Fiscal Agent appointed by the issuer.

**Formula la siguiente declaración, de acuerdo con lo que consta en sus propios registros:**

Makes the following statement, according to its own records:

**1. En relación con los apartados 3 y 4 del artículo 44:**

1. In relation to paragraphs 3 and 4 of Article 44:

**1.1 Identificación de los valores**

1.1 Identification of the securities

**1.2 Fecha de pago de los rendimientos (o de reembolso si son valores emitidos al descuento o segregados)**



200FX&=8eN4ppxfSg

1.2 Income payment date (or refund if the securities are issued at discount or are segregated)

**1.3 Importe total de los rendimientos (o importe total a reembolsar, en todo caso, si son valores emitidos al descuento o segregados)**

1.3 Total amount of income (or total amount to be refunded, in any case, if the securities are issued at discount or are segregated)

**1.4 Importe de los rendimientos correspondiente a contribuyentes del Impuesto sobre la Renta de las Personas Físicas, excepto cupones segregados y principales segregados en cuyo reembolso intervenga una Entidad Gestora**

1.4 Amount of income corresponding to Personal Income Tax taxpayers, except segregated coupons and segregated principals for which reimbursement an intermediary entity is involved

**1.5 Importe de los rendimientos que conforme al apartado 2 del artículo 44 debe abonarse por su importe íntegro (o importe total a reembolsar si son valores emitidos al descuento o segregados).**

1.5 Amount of income which according to paragraph 2 of Article 44 must be paid gross (or total amount to be refunded if the securities are issued at discount or are segregated).

**2. En relación con el apartado 5 del artículo 44.**

2. In relation to paragraph 5 of Article 44.

**2.1 Identificación de los valores**

2.1 Identification of the securities

**2.2 Fecha de pago de los rendimientos (o de reembolso si son valores emitidos al descuento o segregados)**

2.2 Income payment date (or refund if the securities are issued at discount or are segregated)

**2.3 Importe total de los rendimientos (o importe total a reembolsar si son valores emitidos al descuento o segregados)**

2.3 Total amount of income (or total amount to be refunded if the securities are issued at discount or are segregated)

**2.4 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero A.**

2.4 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country A.

**2.5 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero B.**

2.5 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country B.





**2.6 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero C.**

2.6 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country C.

**Lo que declaro en a de de**

I declare the above in on the of of

- (1) **En caso de personas, físicas o jurídicas, no residentes sin establecimiento permanente se hará constar el número o código de identificación que corresponda de conformidad con su país de residencia**
- (1) In case of non-residents (individuals or corporations) without permanent establishment in Spain it shall be included the number or identification code which corresponds according to their country of residence.