

EMEA DC Statement 29 November 2017

Further to the EMEA DC's decision not to hold a separate Auction to settle Updated 2003 Transactions referencing Novo Banco S.A. (**NB**) and specifying the bond with ISIN PTBEQKOM0019 (the **BES Bond**) (which, following the decision of the Board of Directors of the Bank of Portugal on 29 December 2015 to order the re-transfer of certain senior bonds from NB to Banco Espírito Santo, S.A. (**BES**), became an obligation of BES as of 29 December 2015 and has not yet been redeemed) as the Reference Obligation (the **NB Trades with BES Ref Ob**),¹ the EMEA DC wishes to provide certain additional information to market participants to facilitate settlement of the NB Trades with BES Ref Ob subject to Physical Settlement as the Fallback Settlement Method.

Capitalised terms otherwise used but not defined in this statement have the meaning given to them in the 2016 Credit Derivatives Determinations Committees Rules (January 20, 2016 version) and the Updated 2003 Definitions.

Settlement timing for NB Trades with BES Ref Ob

Ignoring the additional consideration discussed below, the settlement timetable with respect to the NB Trades with BES Ref Ob would be as follows:

- (a) **Monday 13 November 2017**: No Auction Announcement Date² with respect to NB Trades with BES Ref Ob;
- (b) **Monday 4 December 2017**: Exercise Cut-off Date (being the date that is 21 calendar days following the No Auction Announcement Date)³, on or prior to which the relevant Notifying Party may deliver a Credit Event Notice;
- (c) **Wednesday 13 December 2017**: deadline for delivery by Buyer of a Notice of Physical Settlement to Seller (being the date that is 30 calendar days following the No Auction Announcement Date).⁴ Buyer may only deliver a Notice of Physical Settlement if the relevant NB Trade with BES Ref Ob has been validly triggered by delivery of a Credit Event Notice (see (b) above); and
- (d) **30th Business Day following delivery of a valid Notice of Physical Settlement (see (c) above)**: Physical Settlement Date.

Additional Consideration: Participation in BES liquidation proceedings

As the BES Bond is the Reference Obligation under the NB Trades with BES Ref Ob, it constitutes a good Deliverable Obligation for the purposes of settling any such triggered trade (unless specified in the Confirmation as an "Excluded Deliverable Obligation").⁵

The EMEA DC understands that any creditor of BES must lodge a credit claim with the Lisbon District Court via the BES Liquidation Committee in order to participate in BES's liquidation proceedings. Pursuant to a press release by BES on 3 November 2017⁶, the EMEA DC further understands that the deadline for the submission of any such credit claim to the Lisbon District Court is 11 December 2017 (the **Claim Deadline**).

¹ See [DC Decision](#) and [DC Statement](#) of 13 November 2017

² The No Auction Announcement Date arises pursuant to Section 12.12(a) of the Updated 2003 Definitions, i.e. the date on which ISDA announced that no Auction Settlement Terms or Parallel Auction Settlement Terms will be published for the purposes of the NB Trades with BES Ref Ob.

³ Section 1.26(b)(ii) of the Updated 2003 Definitions

⁴ Section 3.2(c)(ii)(B)(I)(1) of the Updated 2003 Definitions

⁵ For the avoidance of doubt, given that the final maturity date of the BES Bond was 8 May 2017 (but has not yet been redeemed) the BES Bond will constitute a good Deliverable Obligation irrespective of which maturity bucket the relevant triggered NB Trade with BES Ref Ob falls into.

⁶ Press release available here: http://www.bes.pt/Comunicados/BES%2020171103_uk.pdf

Based on information received from the EMEA DC's Portuguese counsel, it is not clear whether the Claim Deadline represents the final opportunity to lodge a credit claim in the liquidation proceedings.

Accordingly, if Buyers under NB Trades with BES Ref Ob who intend to deliver the BES Bond to the corresponding Sellers in settlement of such trades effect any such delivery as far in advance of the Claim Deadline as possible, this would enable Sellers to lodge their credit claims ahead of the Claim Deadline. Moreover, delivery of the BES Bond in respect of which a credit claim has not been lodged and can no longer be lodged may not amount to good "Delivery" for the purposes of Section 8.2 of the Updated 2003 Definitions. If the right to lodge a credit claim in the liquidation proceedings has lapsed by the time Seller takes receipt of the BES Bond then this may not amount to delivery of "*all right, title and interest in the [BES Bond]*" as required by Section 8.2. Buyer can avoid this risk by delivering the BES Bond to Seller ahead of the Claim Deadline as noted above.

Notwithstanding the foregoing, if a credit claim relating to any BES Bond delivered in settlement of an NB Trade with BES Ref Ob has already been lodged with the Lisbon District Court, then the new holder of such BES Bond need only inform the court that it is now the successor of the credit claim filed by the original creditor. It has been confirmed by Portuguese counsel that the Claim Deadline does not apply to any such update of a previously filed credit claim, i.e. the Claim Deadline only applies to submission of credit claims for the first time.⁷

In light of the foregoing, the DC is of the view that participation in the BES liquidation proceedings by Sellers who receive the BES Bond in settlement of triggered NB Trades with BES Ref Ob would be facilitated if each Buyer (a) informed Seller whether such Buyer has lodged a credit claim with the Lisbon District Court in relation to the BES Bond such Buyer has delivered or intends to deliver (the "relevant credit claim") and (b) if such Buyer has not done so but is aware of another person who did, provided Seller with the provenance of the relevant credit claim (i.e. the person who filed and/or is currently the registered holder of the relevant credit claim according to the Lisbon District Court's records).

⁷ From a procedural perspective, the DC understands that any such substitution request made on or prior to the Claim Deadline may be made via the BES Liquidation Committee, but thereafter must be addressed directly to the Lisbon District Court. In any event, market participants should seek appropriate local law advice (if required) on the procedural and substantive requirements relating to participation in the BES liquidation proceedings.