

## EMEA DC STATEMENT 1 NOVEMBER 2018

The EMEA DC refers to the statement published on 17 October 2018<sup>1</sup> (the “**17/10/18 DC Statement**”) and the statement published on 15 December 2017 entitled “Auction/Settlement Expectations”<sup>2</sup> (the “**NB Auction/Settlement Expectations Statement**”).

In the NB Auction/Settlement Expectations Statement, the DC identified its auction/settlement expectations in respect of senior and subordinated 2014 Transactions/Updated 2003 Transactions referencing Novo Banco S.A. (“**NB**” or the “**Reference Entity**”) in respect of which a Restructuring Credit Event Resolution has occurred.<sup>3</sup> References to any “Category” of transactions in this statement are a reference to the corresponding Category of transactions identified in the NB Auction/Settlement Expectations Statement.

**This statement sets out the timetables of the key deadlines and/or events for the settlement of:**

- **Category 1 transactions (i.e. senior 2014 Transactions for which the Reference Obligation is the Standard Reference Obligation for NB for the Senior Level – ISIN XS0772553037 (the “Senior SRO”)) (the “Senior SRO 2014 Transactions”); and**
- **Category 2 transactions for which the Reference Obligation is a senior obligation of NB (other than the Senior SRO) and which was subject to a Restructuring Credit Event on or about 4 October 2017 (the “Remaining Senior 2014 Transactions”).**

Capitalised terms used but not defined herein have the meaning specified in the NB Auction/Settlement Expectations Statement or the 2018 ISDA Credit Derivatives Determinations Committee Rules (September 28, 2018 version) (including the 2014 Definitions as defined therein), as the context so requires.

### 1. SENIOR SRO 2014 TRANSACTIONS

The expectation under both the NB Auction/Settlement Expectations Statement and the 17/10/18 DC Statement was that settlement of all triggered Senior SRO 2014 Transactions would be effected by reference to a deemed Auction pursuant to which the Auction Final Price would be deemed to be 89.96% (being the value of the Asset Package in respect of the Senior SRO)<sup>4</sup>. This expectation was in part based on the fact that the Senior SRO had a final maturity date (23 April 2019) which was earlier than the 2.5-year Limitation Date (20 June 2020) and so it would have constituted a valid Deliverable Obligation for all Senior SRO 2014 Transactions irrespective of any such triggered transaction’s Scheduled Termination Date and/or whether it was Buyer or Seller who triggered such transaction<sup>5</sup>. Further, even though the DC was aware that some longer-dated NB bonds (the “**Long-dated NB Bonds**”) were still outstanding, the DC had assumed<sup>6</sup> that the value of the Asset Package would in practice be significantly less than the price at which such Long-dated NB Bonds trade in the market. Accordingly, for purposes of simplification the DC had previously anticipated not including the Long-dated NB Bonds as part of the settlement process for the Senior SRO 2014 Transactions.

However, the DC is now of the view that the above assumption is not correct (in particular, taking into account the outcome of the Seller bucket Auction held for senior Updated 2003 Transactions referencing NB pursuant to which the Auction Final Price was 87%) and accordingly has decided to include the Long-dated NB Bonds as part of the settlement process for the Senior SRO 2014 Transactions.

<sup>1</sup> See [DC Statement of 17 October 2018](#)

<sup>2</sup> See [NB Auction/Settlement Expectations Statement](#)

<sup>3</sup> See [DC Resolutions of 5 October 2017](#)

<sup>4</sup> See [DC Statement of 17 October 2018](#)

<sup>5</sup> NB as the Credit Event in this case is an M(M)R Restructuring, inter alia, maturity limitations apply to Buyer-triggered trades pursuant to Section 3.32 of the 2014 Definitions.

<sup>6</sup> See, in particular, under “Important Notes” in Section 2 of the NB Auction/Settlement Expectations Statement.

IN THE INTERESTS OF SIMPLICITY, THIS SECTION DOES NOT DEAL WITH:

- SENIOR SRO 2014 TRANSACTIONS THAT HAVE A SCHEDULED TERMINATION DATE ON OR AFTER 7 FEBRUARY 2035; OR
- SENIOR SRO 2014 TRANSACTIONS THAT ARE SELLER M(M)R TRADES<sup>7</sup>.

ANY MARKET PARTICIPANT THAT IS PARTY TO ANY SUCH SENIOR SRO 2014 TRANSACTION NOT DEALT WITH IN THIS SECTION SHOULD CONTACT [DCSecretary@cdsdeterminationscommittees.org](mailto:DCSecretary@cdsdeterminationscommittees.org), **COPYING NEIL PATEL** ([neil.patel@allenoverly.com](mailto:neil.patel@allenoverly.com)) AND DAVID BENTON ([david.benton@allenoverly.com](mailto:david.benton@allenoverly.com)) AS SOON AS POSSIBLE TO SEEK FURTHER CLARIFICATION REGARDING SETTLEMENT OF SUCH TRANSACTION (IF REQUIRED).

This section should be read in conjunction with the Initial List dated 1 November 2018 entitled “Auction(s) in respect of 2014 Transactions (senior SRO transactions only)”<sup>8</sup> and, in any case, is subject to the publication of the Final List (i.e. the inclusion of any additional obligations and/or the removal of any obligations).

(a) **Revised Auction/Settlement Expectations in respect of Senior SRO 2014 Transactions**

(i) ***Buyer-exercised Senior SRO 2014 Transactions***

The Deliverable Obligation applicable in respect of Buyer-exercised Senior SRO 2014 Transactions is the Senior SRO only. Asset Package Delivery applies to the Senior SRO as it is the Reference Obligation in respect of the Senior SRO 2014 Transactions.

Further to the [17/10/18 DC Statement](#), the value of the Asset Package has been determined to be 89.96% (expressed as a % of the nominal amount of the Senior SRO).

Settlement of any Buyer-exercised Senior SRO 2014 Transactions will be effected by reference to a deemed Auction in accordance with the form of Auction Settlement Terms which the DC will publish in due course<sup>9</sup> and pursuant to which an Auction Final Price of 89.96% will be deemed to have been determined.

(ii) ***Seller-exercised Senior SRO 2014 Transactions***

The Deliverable Obligations applicable in respect of Seller-exercised Senior SRO 2014 Transactions are all of the bonds listed on the Initial List.

Settlement of any Seller-exercised Senior SRO 2014 Transactions will be effected pursuant to the Fallback Settlement Method (Physical Settlement) *unless*:

- (A) the DC determines to hold an Auction because a sufficient number of such trades have been triggered by Sellers; or
- (B) Buyer validly exercises the Movement Option by delivering a Notice to Exercise Movement Option on or prior to the Movement Option Cut-off Date, in which case any such trade will settle through the deemed Auction for Buyer-exercised Senior SRO 2014 Transactions (see Section 1(a)(i) above).

<sup>7</sup> N.B. Seller M(M)R Trades are types of trade which provide that bucketing applies even if Seller triggers the relevant CDS (e.g. recovery lock trades).

<sup>8</sup> The Initial List is available [here](#).

<sup>9</sup> NB these revised Auction Settlement Terms will largely be in the same form as the draft Auction Settlement Terms that were published by the DC Secretary on 26 January 2018 and that are available [here](#).

Accordingly, any Sellers that choose to exercise the option to trigger any Senior SRO 2014 Transactions to which they are a party should note that they may have to physically-settle such transactions if no Auction is held for the transactions and in any case settlement may be by reference to the Long-dated NB Bonds (some of which may have a price lower than the Asset Package and so Sellers may be subject to a higher payout than that applicable in respect of the Asset Package). Further, in circumstances where both Buyer and Seller choose to exercise the relevant Senior SRO 2014 Transaction to which they are party, such trade will be treated as a Seller-exercised Senior SRO 2014 Transaction and not a Buyer-exercised Senior SRO 2014 Transaction (i.e. Seller's trigger prevails).

**(b) Settlement Timetable in respect of Senior SRO 2014 Transactions**

- (i) **Thursday 1 November 2018:** publication of Initial List;<sup>10</sup>
- (ii) **5:00 p.m. London time Monday 5 November 2018:** deadline for submitting additional potential Deliverable Obligations to the DC Secretary for inclusion on the Supplemental List.<sup>11</sup> Please see Submission of Potential Deliverable Obligations and Challenges Note<sup>12</sup> for further information on making such a submission;
- (iii) **7:00 p.m. London time Monday 5 November 2018:** publication of Supplemental List;<sup>13</sup>
- (iv) **5:00 p.m. London time Thursday 8 November 2018:** deadline for challenging obligations on the Supplemental List.<sup>14</sup> Please see Submission of Potential Deliverable Obligations and Challenges Note<sup>15</sup> for further information on making such a challenge;
- (v) **5:00 p.m. London time Friday 9 November 2018:** if applicable, deadline for resolving challenges;<sup>16</sup>
- (vi) **Friday 9 November 2018:** publication of Final List;
- (vii) **Tuesday 13 November 2018:** Exercise Cut-off Date applicable to Seller;<sup>17</sup>
- (viii) **Friday 16 November 2018:** Exercise Cut-off Date applicable to Buyer;<sup>18</sup>
- (ix) **Monday 19 November 2018:** DC Secretary to announce whether or not an Auction will be held in respect of Seller-exercised Senior SRO 2014 Transactions;<sup>19</sup>
- (x) **Thursday 22 November 2018: in respect of any Seller-exercised Senior SRO 2014 Transactions only, Movement Option Cut-off Date.**<sup>20</sup> Buyer may only deliver a Notice to

<sup>10</sup> See Initial List entitled "Auction(s) in respect of 2014 Transactions (senior SRO transactions only)" that was published on the DC website on 1 November 2018 and is available [here](#).

<sup>11</sup> Section 3.3(c) of the DC Rules.

<sup>12</sup> Available [here](#).

<sup>13</sup> Section 3.3(c) of the DC Rules.

<sup>14</sup> Section 3.3(d) of the DC Rules.

<sup>15</sup> Available [here](#).

<sup>16</sup> In light of certain operational concerns that have previously been raised by CCPs and certain other market participants where bucketing applies, the DC has resolved to shorten the deadline for resolving challenges that would otherwise apply pursuant to Section 3.3(e) of the DC Rules so that the Final List for the purposes of Senior SRO 2014 Transactions can be published on Friday 9 November 2018. This would mean that the Buyer and Seller triggering cut-off dates will be determined by reference to Friday 9 November 2018 and therefore the typical Buyer and Seller triggering windows will occur during the same single calendar week to address the aforementioned operational concerns.

<sup>17</sup> Section 1.41(a)(i)(A) of the 2014 Definitions, being two Relevant City Business Days following the date of publication of the Final List.

<sup>18</sup> Section 1.41(a)(i)(B) of the 2014 Definitions, being five Relevant City Business Days following the date of publication of the Final List.

<sup>19</sup> Section 3.4(c) of the DC Rules. If the DC determines not to hold an Auction in respect of Seller-exercised Senior SRO 2014 Transactions then this will be the No Auction Announcement Date in respect of such transactions.

<sup>20</sup> Section 6.17 of the 2014 Definitions, as modified by the DC resolution of 1 November 2018.

Exercise Movement Option if the relevant Senior SRO 2014 Transaction has been validly triggered by Seller delivering a Credit Event Notice (see Section 1(b)(vii) above) and the DC determines not to hold an Auction in respect of Seller-exercised Senior SRO 2014 Transactions (see Section 1(b)(ix) above);

- (xi) **Tuesday 27 November 2018:** Auction Date of deemed Auction and, if applicable, Auction in respect of Seller-exercised Senior SRO 2014 Transactions;
- (xii) **Wednesday 28 November 2018: in respect of any Seller-exercised Senior SRO 2014 Transactions only,** the deadline for delivery by Buyer of a Notice of Physical Settlement to Seller (being the Parallel Notice of Physical Settlement Date).<sup>21</sup> Buyer may only deliver a Notice of Physical Settlement if the relevant Senior SRO 2014 Transaction has been validly triggered by Seller delivering a Credit Event Notice (see Section 1(b)(vii) above), the DC has determined not to hold an Auction in respect of Seller-exercised Senior SRO 2014 Transactions (see Section 1(b)(ix) above) and Buyer has not validly exercised the Movement Option (see Section 1(b)(x) above), i.e. the Fallback Settlement Method applies;
- (xiii) **Friday 30 November 2018:** Auction Settlement Date.
- (xiv) **30th Business Day following delivery of a valid Notice of Physical Settlement (see Section 1(b)(xii) above): in respect of any Seller-exercised Senior SRO 2014 Transactions only,** Physical Settlement Date (if the Fallback Settlement Method applies – See Section 1(a)(ii) above).

## 2. REMAINING SENIOR 2014 TRANSACTIONS

The DC is not aware whether or not any Remaining Senior 2014 Transactions exist but if they do then the below sets out how they could settle.

As noted in the NB Auction/Settlement Expectations Statement, the Remaining Senior 2014 Transactions will be subject to the Fallback Settlement Method and may be settled based on delivery of any Asset Package relating to the relevant Reference Obligation when the DC resolves (and the DC Secretary announces) that no Transaction Auction Settlement Terms nor Parallel Auction Settlement Terms will be published in respect of such transactions (i.e. a No Auction Announcement Date occurs pursuant to Section 6.11(a) of the 2014 Definitions).

The DC resolved today not to hold an Auction in respect of any Remaining Senior 2014 Transactions and further agreed that the related No Auction Announcement Date will therefore be 1 November 2018. Accordingly, these Remaining Senior 2014 Transactions will be subject to the Fallback Settlement Method in accordance with the following timetable:

- (i) **Thursday 1 November 2018:** No Auction Announcement Date<sup>22</sup> with respect to the Remaining Senior 2014 Transactions;
- (ii) **Thursday 15 November 2018:** Exercise Cut-off Date (being the date that is 14 calendar days following the No Auction Announcement Date),<sup>23</sup> on or prior to which the relevant Notifying Party may deliver a Credit Event Notice;

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<sup>21</sup> Section 8.10(b)(ii)(B) of the 2014 Definitions.

<sup>22</sup> The No Auction Announcement Date arises pursuant to Section 6.11(a) of the 2014 Definitions, i.e. the date on which the DC Secretary announces that no Transaction Auction Settlement Terms and, if applicable, Parallel Auction Settlement Terms will be published for the purposes of these Remaining Senior 2014 Transactions.

<sup>23</sup> Section 1.41(a)(ii) of the 2014 Definitions.

- (iii) **Monday 3 December 2018: NOPS Cut-off Date** (being the deadline for delivery by Buyer of a Notice of Physical Settlement to Seller, which will be the date that is 30 calendar days following the No Auction Announcement Date).<sup>24</sup> Buyer may only deliver a Notice of Physical Settlement if the relevant Remaining Senior 2014 Transaction has been validly triggered by delivery of a Credit Event Notice (see Section 2(ii) above); and
- (iv) **30th Business Day following the NOPS Cut-off Date (see Section 2(iii) above):** Physical Settlement Date (assuming Buyer delivered a valid Notice of Physical Settlement to Seller on or prior to the NOPS Cut-off Date).<sup>25</sup> As noted above, it may be possible to settle the relevant Remaining Senior 2014 Transaction based on delivery of the Asset Package relating to the relevant Reference Obligation. If the Asset Package includes the option right of beneficial holders of the Reference Obligation to deposit the principal portion of the redemption proceeds into Fixed-Term Deposit Accounts offered by NB, then (and as was the case in respect of the Senior SRO) that Asset will constitute a Non-Transferable Instrument<sup>26</sup> and so, in accordance with Section 8.12(b)(v) of the 2014 Definitions, this element of the Asset Package will be deemed to be an amount of cash equal its market value (as determined by the Calculation Agent by reference to an appropriate specialist valuation and for these purposes the valuation of the third party valuation agent of the Fixed-Term Deposit Account option right in respect of the Senior SRO may be relevant). Further, if the entirety of the Asset Package ultimately consists of a cash amount (as was the case in respect of the Senior SRO), settlement of the relevant triggered Remaining Senior 2014 Transaction will effectively be a net cash settlement payable by Seller (or Buyer, if applicable).

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<sup>24</sup> Section 8.10(b)(ii)(A)(II)(x) of the 2014 Definitions.

<sup>25</sup> Section 8.17 of the 2014 Definitions.

<sup>26</sup> Section 8.13 of the 2014 Definitions.