

## THE COMPANY

The Company is a Delaware limited liability company formed on 3 January 2002. The Company was formed for the sole purposes of (i) issuing the Company Preferred Securities and the Company Common Securities and any additional limited liability company interests as described herein, (ii) acquiring and holding the Subordinated Notes issued by the Branch or any successor Replacement Notes and (iii) performing functions necessary or incidental thereto. The Company has filed its certificate of formation with the Secretary of State of the State of Delaware and the Bank, acting through the Branch, has entered into the Limited Liability Company Agreement of the Company. The Company will be continued pursuant to an Amended and Restated Limited Liability Company Agreement of the Company (the "Company Agreement"), to be dated as of the Issue Date between the Bank, acting through the Branch, as holder of the Company Common Securities, and the Trust as holder of the Company Preferred Securities. See "Taxation—Certain United States Federal Income Tax Consequences" for a discussion of the United States federal income tax treatment of the Company.

The Bank intends to treat the Company Preferred Securities as Tier 1 capital for purposes of the consolidated risk-based capital guidelines of the *Commission bancaire*.

The Bank, acting through the Branch, owns all of the Company Common Securities, representing 100% of the voting rights in the Company (subject to the limited rights of holders of the Company Preferred Securities to nominate the Independent Directors and other rights as described herein). The Company Common Securities are being purchased for an aggregate purchase price of €1,000.

The Company will covenant to maintain "BNP Paribas" as part of its name for as long as any Trust Preferred Securities remain outstanding, unless because of a merger or other business combination involving the Bank or a change by the Bank of its own name, inclusion of this term as part of the Company's name is no longer appropriate.

For a further description of the operations of the Company, see "—Business and Strategy of the Company", "—Management of the Company" and "Investment Considerations".

The principal executive offices of the Company are located at 787 Seventh Avenue, New York, NY 10019, U.S.A.

### Business and Strategy of the Company

#### General

The Subordinated Notes or any successor Replacement Notes owned by the Company from time to time will generate net income for distribution by the Company to the Trust as holder of the Company Preferred Securities (and consequently for pass-through by the Trust to holders of the Trust Preferred Securities) and to the Bank, acting through the Branch, as holder of the Company Common Securities. The Company will acquire Subordinated Notes having an aggregate principal amount of €600,000,000 from the Branch. Although the Company may issue additional preferred securities that are Company Parity Preferred Securities without the consent of holders of the Company Preferred Securities, the Company has no present intention to do so.

#### Dividends

The Company currently expects to pay an aggregate amount of dividends with respect to the outstanding Company Preferred Securities and the Company Common Securities equal to approximately 100% of the interest received by the Company on the Subordinated Notes or any successor Replacement Notes.

The Company Agreement will provide that dividends with respect to Company Preferred Securities will be payable out of the interest received by the Company on the Subordinated Notes or any successor Replacement Notes and out of amounts contributed by the Bank to the Company pursuant to the Support Agreement. Under the Delaware Limited Liability Company Act, the Company may not make dividends or other distributions on the Company Preferred Securities or the Company Common Securities if, after giving effect to the distributions, the Company's liabilities would

exceed the fair value of its assets. The Company is precluded by the Company Agreement from incurring any indebtedness for borrowed money and does not anticipate having any material liabilities.

The Company generally has no obligation to pay dividends on the Company Preferred Securities. However, the Company will be required to pay the Mandatory Dividend Payment Amount on Mandatory Dividend Payment Dates. See "Description of the Company Preferred Securities—Dividends—Mandatory Dividends".

#### ***Permissible Investments***

The Company's investment policies will be established pursuant to the Company Agreement. Under the investment policies, the Company may not hold or invest in any securities other than the Subordinated Notes. The foregoing notwithstanding, in the event that any of the Subordinated Notes become due or are redeemed while any Company Preferred Securities remain outstanding and are not subject to a notice of redemption, the Bank may, and under certain circumstances must, cause the Company to invest the proceeds of redemption of the Subordinated Notes in subordinated debt securities that are issued by any branch of the Bank, that have the same ranking in a liquidation of the Bank as the Subordinated Notes and otherwise have economic terms essentially equivalent to the Subordinated Notes, *provided* that such replacement does not result in a Capital Disqualification Event, a Tax Event or an Investment Company Act Event. See "Description of the Subordinated Notes—Redemption" and "—Replacement Notes".

The Company's investment policies require that the Company maintain its assets in a manner that will not require the Company to be registered as an investment company under the 1940 Act and that will not give rise to a Capital Disqualification Event or a Tax Event.

The investment policies may be amended only by the affirmative vote of both a majority of the entire Board of Directors and a majority of the Independent Directors (or the Independent Director if there is only one Independent Director). The Company will be prohibited by the Company Agreement from selling the Subordinated Notes or any successor Replacement Notes. If the Subordinated Notes are redeemed without a corresponding redemption of the Company Preferred Securities, the proceeds of such redemption will be required to be invested in Replacement Notes.

#### ***No Indebtedness***

The Company will be prohibited by the Company Agreement from incurring indebtedness for borrowed money.

#### ***Employees and Administration Agreement***

Prior to issuing the Company Preferred Securities, the Company and the Branch will enter into an Administration Agreement pursuant to which the Branch will provide (or cause to be provided) certain accounting, legal, tax and other support services to the Company, assist the Company in maintaining compliance with all pertinent United States local, state and federal laws and provide necessary administrative, record keeping and secretarial services to the Company. Under the Administration Agreement, the Company will reimburse the Branch only for direct out-of-pocket expenses incurred by the Branch in the performance of such services.

The Company will maintain limited liability company records and audited financial statements that are separate from those of the Bank or any of its affiliates. None of the officers, employees or directors of the Company will have any direct or indirect pecuniary interest in any security to be acquired or disposed of by the Company or in any transaction in which the Company has an interest.

#### ***Legal Proceedings***

The Company is not the subject of any litigation. None of the Company, the Bank or any of its affiliates is currently involved in nor, to the Company's knowledge, currently threatened with any litigation with respect to the Company Preferred Securities, the Subordinated Notes or any aspect of the Company's operations.

## Management of the Company

### *Directors and Executive Officers*

The Company Agreement provides that the Company's Board of Directors will at all times be composed of no less than five nor more than seven members, at least one of whom will be an Independent Director. Initially the Company's Board of Directors will be composed of five members, one of whom is the Independent Director. The directors will be designated as "managers" of the Company within the meaning of the Delaware Limited Liability Company Act. Directors may be removed, with or without cause, by majority vote of the remaining directors. Directors may resign at any time upon written notice to the board of directors or to the President or Secretary of the Company. The directors will serve until their successors are designated or until they resign or are removed. There is no current intention to alter the number of directors comprising the Board of Directors except if additional Independent Directors are elected as described under "—Independent Directors". The Company will have three officers at issuance of the Company Preferred Securities. It is currently anticipated that all of the officers of the Company will also be officers or employees of the Bank or its affiliates.

The persons who are directors and executive officers of the Company are as follows:

<u>Name</u>	<u>Position and Offices Held</u>
Jean-Pierre Beck .....	Director and President
John Powers .....	Director and Secretary
Sady Karet .....	Director and Treasurer
Donna Kiernan .....	Director
Donald J. Puglisi .....	Independent Director

Each of the initial directors (other than the Independent Director) and officers of the Company are individuals who are officers or employees of the Bank or the Branch or an affiliate thereof. The initial Independent Director is Donald J. Puglisi, who is the MBNA America Business Professor and Professor of Finance at the University of Delaware.

### *Independent Directors*

Under the Company Agreement an "Independent Director" is an individual who is not and has not been during the preceding three years, an officer or employee of the Bank or an affiliate of the Bank (other than BNP U.S. Funding L.L.C., BNP Paribas Capital Preferred L.L.C., BNP PARIBAS Capital Preferred II L.L.C. or BNP PARIBAS Capital Preferred III L.L.C.) and who does not own ordinary shares of the Bank having a fair value of €500,000 or more and includes any directors elected by holders of the Company Preferred Securities.

Under the Company Agreement, each Independent Director, in determining whether any proposed action requiring his approval is in the best interests of the Company (i) as to matters relating to the Support Agreement, will, to the fullest extent permitted by law, consider only the interests of the holders of the Company Preferred Securities and (ii) as to all other matters, will consider the interests of holders of the Company Common Securities, the Company Preferred Securities and Company Parity Preferred Securities, if any.

The Company Agreement will provide that, for so long as any Company Preferred Securities or Company Parity Preferred Securities are outstanding, certain actions by the Company must be approved by both a majority of the Board of Directors as a whole and by a majority of the Independent Directors (or by the Independent Director if there is only one Independent Director). The actions that require approval by the Independent Directors include (i) the issuance of additional Company Parity Preferred Securities, (ii) any changes to the investment policies, (iii) to the fullest extent permitted by law, any liquidation, dissolution or termination of the Company without a concurrent liquidation of the Bank, (iv) the conversion of the Company into another type of entity, (v) the consolidation or merger of the Company with or into any other entity, the consolidation or merger of any other entity with or into the Company or the sale of all or substantially all of the assets of the Company (except as required by the Company Agreement) or (vi) amendments to the Company Agreement that will materially alter the economics of the Company Preferred Securities. Additionally, a majority of the Independent Directors (or the Independent Director if there is only one Independent Director), acting alone and without the vote or consent of the other members of the Board of Directors, but subject to the rights of holders of the Company Preferred Securities as described

under "Description of the Support Agreement—Enforcement and Third Party Beneficiaries", have the right on behalf of the Company to enforce the Support Agreement.

If full dividends are not paid on any Dividend Payment Date, the holders of the Company Preferred Securities shall have the right to elect two persons of their choosing as additional directors (up to a maximum total of two additional Independent Directors). Each person so elected shall be deemed to be an Independent Director irrespective of whether he or she meets the financial test described above. Such right may be exercised by the holders of a majority (by liquidation preference) of the Company Preferred Securities at a meeting called for such purpose (which the Company Agreement will provide shall be called at the request of any holder of the Company Preferred Securities), and shall continue until full dividends have been paid on the Company Preferred Securities for a one-year period. Any vacancy in the office of an Independent Director during such period may be filled only by holders of the Company Preferred Securities voting as set forth above.

#### ***Compensation of Directors and Officers***

The Company intends to pay the initial Independent Director a fee for his services as a director of the Company equal to \$4,000 per year, plus reimbursement of expenses for attendance at each meeting of the Board of Directors.

#### ***Limitations on Liability of Directors and Officers***

The Company Agreement will provide that the Company's directors have no personal liability to the Company or its security holders for monetary damages (i) for voting not to take enforcement action with respect to the Subordinated Notes or any successor Replacement Notes owned by the Company or (ii) at any time for breach of any such director's fiduciary duty (if any) except for such director's gross negligence or wilful misconduct. The Company Agreement will provide that the Company will indemnify any director or officer of the Company for any liability and related expenses (including reasonable counsel's fees) arising out of such director's or officer's status as a director or officer of the Company, except for liability determined by a court of competent jurisdiction to have arisen out of such director's or officer's gross negligence or wilful misconduct. The Company Agreement will provide that the right to indemnification is a contractual right and set forth certain procedural and evidentiary standards applicable to the enforcement of a claim under the indemnity. The Company Agreement will provide that the Company may purchase and maintain insurance to protect any director or officer against any liability asserted against him or her, or incurred by him or her, arising out of his or her status as such.

## THE TRUST

The Trust is a statutory business trust created under the Delaware Business Trust Act pursuant to the filing of a certificate of trust with the Delaware Secretary of State on 3 January 2002. The Trust will continue its existence from and after the Issue Date pursuant to the Amended and Restated Trust Agreement (the "Trust Agreement") to be entered into between the Company, as grantor, and U.S. Bank Trust National Association, as trustee (the "Trustee").

The Trust was formed for the sole purpose of (i) issuing Trust Preferred Securities representing a corresponding amount of Company Preferred Securities to be held by the Trust, (ii) holding the Company Preferred Securities and (iii) performing functions necessary or incidental thereto. The Trust cannot issue other equity securities or any debt securities or engage in any other activities. The Company Preferred Securities will be the only assets of the Trust.

The Trustee may be removed at any time by the Company by notice to the Trustee, with effect upon the appointment of a successor trustee. The Trustee may resign at any time by notice to the Company, with effect upon the appointment of a successor trustee. Any successor trustee must be a bank or trust company or an affiliate of a bank or trust company with its principal place of business in the State of Delaware and a combined capital and surplus of at least \$50 million.

See "Taxation—United States Taxation—Certain United States Federal Income Tax Consequences—United States Federal Income Tax Treatment of the Trust" for a discussion of the United States federal income tax treatment of the Trust.

All expenses and liabilities of the Trust will be paid by the Branch, provided that if the Trustee of the Trust incurs fees, charges or expenses at the request of a holder of Trust Preferred Securities or other person for which the Trust is not otherwise liable under the Trust Agreement, such holder or other person will be liable for such fees, charges and expenses.

The principal executive offices of the Trust are located 300 Delaware Avenue, Suite 813, Wilmington, DE, U.S.A.

## DESCRIPTION OF THE SUPPORT AGREEMENT

At or prior to the issuance of the Trust Preferred Securities and the Company Preferred Securities, the Bank and the Company will execute the Support Agreement, a copy of which will be provided to prospective investors in the Trust Preferred Securities upon request to the Bank. The following is a summary of certain provisions of the Support Agreement and is qualified in its entirety by reference to the terms and provisions of the Support Agreement.

### Support of Dividends

Under the Support Agreement, the Bank will agree that it will contribute (or cause to be contributed) to the Company such additional funds as are necessary (after payment of all Company expenses and taxes) to enable the Company (i) to pay any dividends on the Company Preferred Securities that are due and payable on any Mandatory Dividend Payment Date and take such steps as are necessary to procure payment by the Company to the holders of the Company Preferred Securities of dividends that are due and payable on any Mandatory Dividend Payment Date and (ii) to pay the redemption price on the Company Preferred Securities on the redemption date specified in a properly given notice of redemption (in each case including any Additional Amounts that are required to be paid as discussed under "Description of the Company Preferred Securities—Dividends—Additional Amounts").

See "Description of the Company Preferred Securities—Dividends—Mandatory Dividends" describing circumstances where dividends are mandatorily due and payable.

### Claim in Liquidation of the Bank

The Bank will agree in the Support Agreement that if the Company is liquidated, whether voluntarily or involuntarily and whether in connection with the bankruptcy or insolvency of the Company or otherwise, the Bank will contribute (or cause to be contributed) to the Company such additional funds as are necessary to enable the Company to pay for each €1,000 of the liquidation preference of the Company Preferred Securities then outstanding an amount (the "Liquidation Claim Amount") equal to (i) €1,000, *plus* (ii) unpaid dividends, if any, thereon with respect to the current Dividend Period accrued on a daily basis to the date of liquidation, *plus* (iii) unpaid definitive dividends for any prior Dividend Period, but without interest and without accumulation of unpaid non-definitive dividends for any prior Dividend Period, and including any Additional Amounts required to be paid.

Notwithstanding the foregoing, and as a consequence of the subordination of the Bank's payment obligations under the Support Agreement, the Company Agreement will provide that, in a liquidation of the Company that is concurrent with a liquidation of the Bank, holders of Company Preferred Securities may not receive an amount exceeding the amount to which such holders would have been entitled had they instead owned Bank Parity Preferred Shares having the same liquidation preference and dividend rights as the Company Preferred Securities if such Bank Parity Securities were permitted under applicable law.

### Ranking of Bank's Payment Obligations

The Bank's payment obligations under the Support Agreement will be subordinated to all Senior Indebtedness of the Bank, will rank *pari passu* with Bank Parity Guarantees (which include certain additional support agreements—see "Description of the Company Preferred Securities—Dividends—Mandatory Dividends") and will rank before claims of holders of Bank Ordinary Shares. Such subordination will be implemented through the inclusion of provisions in the Support Agreement under which the Company will agree not to receive amounts in respect of its claims under the Support Agreement following the entry of a judgment initiating bankruptcy proceedings (*redressement judiciaire*) or judicial liquidation proceedings (*liquidation judiciaire*) in respect of the Bank under French law, until there has been a determination by the liquidator, in consultation with the *Secrétariat général de la Commission bancaire*, that all claims of creditors under Senior Indebtedness of the Bank have been or will be paid. According to French bankruptcy law, in case of *redressement judiciaire* and/or in case of *liquidation judiciaire*, it would be necessary to file a proof of claim against the Bank.

As used herein, "Senior Indebtedness of the Bank" means all deposits and other liabilities of the Bank (including those in respect of bonds, notes and debentures, whether senior or subordinated,

instruments constituting “Upper Tier 2” capital of the Bank on a consolidated basis under Applicable Banking Regulations, *prêts participatifs* and *titres participatifs*), other than (i) liabilities of the Bank under the Support Agreement, and (ii) other *pari passu* claims. For purposes of the foregoing, “other *pari passu* claims” means claims of creditors of the Bank that are subordinated so as to rank *pari passu* with the claim of the Company in respect of the Support Agreement.

Although the Company considers it unlikely, it is nonetheless possible that the shareholders of the Bank, creditors or other persons might try to challenge under French law the obligations of the Bank to the Company under the Support Agreement, on the ground that (a) the obligation of the Bank to make (or cause to be made) payments to the Company in respect of mandatory dividends impermissibly burdens the statutory right of the shareholders of the Bank to determine dividends or (b) the combined effect of the obligations of the Bank and the limited waiver referred to above effectively creates a claim in the liquidation of the Bank that is subordinated to certain subordinated debt instruments of the Bank, and that such subordination contravenes the statutorily mandated junior ranking of such debt instruments. Although there is no legal precedent on these issues, the Company believes that any such challenge, if made, is unlikely to be successful.

### **Enforcement and Third Party Beneficiaries**

The Support Agreement will be enforced by the Company at the direction of a majority of the Independent Directors (or of the Independent Director if there is only one Independent Director). Notwithstanding the foregoing, beneficial holders of the Company Preferred Securities (including holders of Trust Preferred Securities) will be third party beneficiaries of the Support Agreement, and beneficial holders of a majority (by liquidation preference) of the Company Preferred Securities (including holders of the Trust Preferred Securities that represent such Company Preferred Securities) will have the right to bring suit and take other action at their discretion to enforce the Support Agreement without the need for any other action of any person, including the Trustee or the Independent Directors.

### **Other Covenants**

The Bank will make the following additional covenants in the Support Agreement in favour of the Company: (i) if the Company becomes obligated to pay Additional Amounts, the Bank will from time to time (x) contribute (or cause to be contributed) such additional funds to the Company as shall be necessary (after payment of all Company expenses and taxes) in order to ensure that the Company has sufficient funds available to it to pay such Additional Amounts and (y) take such action as shall be necessary to cause the Company to comply with its obligation to pay such Additional Amounts; (ii) for so long as any of the Company Preferred Securities are outstanding, the Bank will not issue any preferred or preference shares (or similar equity instruments) ranking senior to its obligations under the Support Agreement or give any guarantee or support undertaking in respect of any preferred securities or preferred or preference shares issued by any of its subsidiaries, if such guarantee or support undertaking would rank senior to the Support Agreement; (iii) 100% of the Company Common Securities will be held by the Bank, the Branch or a branch within the European Economic Area, or, subject to the prior approval of the *Commission bancaire*, by a branch outside the European Economic Area or by one or more of the Bank’s subsidiaries that are deemed to be a “company controlled by the parent company” under Rule 3a-5, as amended, of the 1940 Act; (iv) the Bank will not permit, or take any action to cause, the liquidation, dissolution, winding up or termination of the Company, unless the Bank is itself in liquidation and the approval of the *Commission bancaire* for such action has been received; and (v) the Bank will not assign its obligations under the Support Agreement, except in the case of a merger, consolidation or sale of substantially all of its assets, where the Bank is not the surviving entity.

### **Governing Law**

The Support Agreement will be governed by and construed in accordance with the laws of the State of New York.

## DESCRIPTION OF THE TRUST PREFERRED SECURITIES

The following is a summary of certain provisions of the Trust Preferred Securities and the Trust Agreement and is qualified in its entirety by reference to the terms and provisions of the Trust Agreement. A copy of the Trust Agreement is available to prospective investors upon request to the Bank.

### General

The Trust Preferred Securities will be issued by the Trust pursuant to the Trust Agreement. The Trust is issuing 600,000 Trust Preferred Securities. The aggregate liquidation amount of the Trust Preferred Securities is €600,000,000. Each Trust Preferred Security represents a corresponding amount of the Company Preferred Securities. The Trust is a statutory business trust created under the Delaware Business Trust Act. The Trustee will hold the Company Preferred Securities deposited in the Trust for the benefit of the holders of the Trust Preferred Securities. The Trust Agreement provides that, to the fullest extent permitted by law, without the need for any other action of any person, including the Trustee or the Independent Directors and any other holder of the Trust Preferred Securities, each holder of Trust Preferred Securities shall be entitled to enforce in the name of the Trust the Trust's rights under the corresponding amount of Company Preferred Securities represented by the Trust Preferred Securities held by such holder. Trust Preferred Securities may be exchanged for the underlying Company Preferred Securities at the option of holders as described under "—Withdrawal of Company Preferred Securities". The funds of the Trust available for distribution to the holders of the Trust Preferred Securities will be limited solely to payments received by the Trust from the Company as dividends or redemption payments on the Company Preferred Securities, which payments will be passed through upon receipt by the Trust to the holders of the Trust Preferred Securities.

Application has been made to list the Trust Preferred Securities on the Official Segment of the Stock Market of Euronext Amsterdam N.V.

*Other than in the Netherlands, no action has been taken to permit a public offering of the Trust Preferred Securities in any jurisdiction where action would be required for such purpose. The Trust Preferred Securities may not be offered or sold, directly or indirectly, and this Offering Circular may not be distributed in any jurisdiction, except in accordance with the legal requirements applicable in that jurisdiction. In particular, the Trust Preferred Securities have not been, and will not be, registered under the Securities Act. Subject to certain exceptions, the Trust Preferred Securities may not be offered, sold or delivered within the United States or to U.S. Persons. A further description of certain restrictions on the offering and sale of the Trust Preferred Securities and on the distribution of this document is given under "Notice to Investors" and "Plan of Distribution".*

### Distributions

Dividends on the Company Preferred Securities received by the Trust will be passed through by the Trust as distributions on the Trust Preferred Securities. See "Description of the Company Preferred Securities—Dividends". Accordingly, when, and if, dividends are paid on the Company Preferred Securities, distributions on the Trust Preferred Securities will be payable (i) annually in arrears on the dividend payment dates regularly scheduled to occur on 24 January of each year, commencing 24 January 2003 and except that the last such dividend payment date shall be 24 January 2012, and (ii) thereafter quarterly on 24 January, 24 April, 24 July and 24 October of each year, commencing on 24 April 2012 (each a "Dividend Payment Date").

If any Dividend Payment Date falls on a day that is not a Business Day, dividends relating to that Dividend Payment Date will be payable on the next succeeding Business Day unless that day falls in the next calendar month, in which case such dividends will be payable on the immediately preceding Business Day, without any adjustment, interest or further payment as a result thereof.

If (and to the extent) the Trust receives any payments representing a periodic dividend payment or a redemption payment on the Company Preferred Securities, the Trust will distribute such amounts to the holders of the Trust Preferred Securities in proportion to their holdings of the Trust Preferred Securities (subject to the provisions described below under "—Redemption of Trust Preferred Securities" in the case of a partial redemption of Company Preferred Securities and Trust Preferred Securities). Each periodic distribution on the Trust Preferred Securities will be payable to the holders on the date of payment. However, the Trust is not obligated to make any dividend distribution to the



extent that it does not receive any dividend payments on the Company Preferred Securities. Dividends will not be cumulative. See “Description of the Company Preferred Securities—Dividends—Dividend Limitation Notice” with respect to the consequences of a Dividend Limitation Notice being given and the manner in which notice thereof will be given to holders of Trust Preferred Securities and Company Preferred Securities.

#### **Additional Amounts**

See “Description of the Company Preferred Securities—Dividends—Additional Amounts” with respect to the obligation of the Company to pay additional amounts if the Bank, the Branch, the issuer of any Replacement Notes, the Company or the Trust is required to withhold any Relevant Taxes.

#### **Redemption of Trust Preferred Securities**

The Trust Preferred Securities will be subject to redemption only upon redemption of the Company Preferred Securities. If the Company shall elect to redeem the Company Preferred Securities in accordance with the Company Agreement, as described under “Description of the Company Preferred Securities—Redemption”, the Company shall give the Trustee and the Paying Agent not less than 30 nor more than 60 calendar days’ prior notice thereof. The Paying Agent will provide holders of the Trust Preferred Securities notice of such redemption not less than 20 calendar days prior to the date fixed for redemption of the Company Preferred Securities in the manner described below under “—Notices”.

On the date of redemption of the Company Preferred Securities, provided that the Company shall have deposited with the Paying Agent on behalf of the Trust the aggregate amount payable upon redemption of all Company Preferred Securities held by the Trust to be redeemed, the Paying Agent on behalf of the Trust shall redeem an equal amount of Trust Preferred Securities at the same redemption price at which such Company Preferred Securities are being redeemed. In the event that fewer than all the outstanding Trust Preferred Securities are redeemed, the Trust Preferred Securities to be redeemed (in increments of €1,000) shall be selected by lot or *pro rata* or other equitable method determined by the Trustee, provided that such method satisfies any requirements of any securities exchange on which the Trust Preferred Securities may then be listed and, if the Trust Preferred Securities are then evidenced by a Global Certificate, any requirements of the Common Depositary for Clearstream, Luxembourg and Euroclear. The Trust Agreement provides that the Company will, in the event of a partial redemption of the Company Preferred Securities that would result in a delisting of the Trust Preferred Securities from any securities exchange on which the Trust Preferred Securities are then listed, redeem the Company Preferred Securities in whole.

#### **Effect of Liquidation of the Company**

In the event a liquidation of the Company is commenced, the Trust will be dissolved, after satisfaction of creditors of the Trust, if any, as required by applicable law and after distributing to the holders of the Trust Preferred Securities the corresponding amount of Company Preferred Securities represented by such Trust Preferred Securities. Thereupon, the Trust will be terminated and the Company Preferred Securities will be distributed to the holders of Trust Preferred Securities who will thereafter be direct holders of the specific Company Preferred Securities distributed to them.

#### **Voting Rights**

If at any time the holders of the Company Preferred Securities shall be entitled to vote pursuant to the terms of the Company Agreement, the Trustee shall notify the holders of the Trust Preferred Securities of such right, request the specific direction of each holder of a Trust Preferred Security as to the vote with respect to the Company Preferred Securities represented by such Trust Preferred Security, and the Trustee shall vote only in accordance with such specific direction.

Upon receipt of notice of any meeting at which the holders of Company Preferred Securities are entitled to vote, the Trustee shall, as soon as practicable thereafter, provide notice to the holders of the Trust Preferred Securities in the manner described below under “—Notices” which notice shall be provided by the Company and shall contain (i) such information as is contained in such notice of meeting, (ii) a statement that the holders of Trust Preferred Securities will be entitled, subject to any applicable provision of law or the Company Agreement, to direct the Trustee as to the exercise of the

voting rights pertaining to the number of Company Preferred Securities represented by their respective Trust Preferred Securities and (iii) a brief statement as to the manner in which such specific directions may be given. Upon the written direction of a holder of a Trust Preferred Security, the Trustee shall vote or cause to be voted a number of Company Preferred Securities represented by such holder of Trust Preferred Securities in accordance with the instructions set forth in such direction. In the absence of specific instructions from the holder of a Trust Preferred Security, the Trustee will abstain from voting to the extent of the Company Preferred Securities represented by such Trust Preferred Security. Neither the Bank nor any affiliate of the Bank will be entitled to vote any Trust Preferred Securities that it holds.

### **Withdrawal of Company Preferred Securities**

After the exchange of the Temporary Regulation S Global Certificate for the Permanent Global Certificate described under "—Form and Denomination" below, a beneficial owner of Trust Preferred Securities sold outside of the United States pursuant to Regulation S may withdraw all, but not less than all, of the Company Preferred Securities represented by such Trust Preferred Securities by providing (i) a written notice to the Trustee, with evidence of beneficial ownership in form satisfactory to the Trustee and (ii) certification as to the beneficial ownership by non-U.S. persons (as defined in Regulation S and U.S. federal tax law). This notice shall also be deemed to be the beneficial owner's agreement to be subject to the terms of the Company Agreement applicable to the rights of holders of Company Preferred Securities.

Within a reasonable period after such request has been properly made, the Trustee shall instruct the Common Depositary for Clearstream, Luxembourg and Euroclear to reduce the Trust Preferred Securities represented by the Global Certificate held by the Common Depositary by the amount (by liquidation amount) of Trust Preferred Securities to be so withdrawn by the withdrawing owner. The Company shall issue to the withdrawing owner a certificate representing the amount (by liquidation preference) of Company Preferred Securities so withdrawn and the Trustee shall reduce the number of Company Preferred Securities represented by the Permanent Global Certificate held by the Trust accordingly. It is expected that withdrawn Company Preferred Securities will only be issued in definitive fully registered form and will not be eligible to be held through Clearstream, Luxembourg or Euroclear or a replacement clearing agency.

Any beneficial owner of Company Preferred Securities may redeposit all or any portion of withdrawn Company Preferred Securities by (i) delivery to the Trustee of a certificate or certificates for the Company Preferred Securities to be deposited, properly endorsed or accompanied, if required by the Trustee, by a properly executed instrument of transfer or endorsement in form satisfactory to the Trustee in compliance with the terms of the Company Agreement, and (ii) certification as to the beneficial ownership by non-U.S. persons (as defined in Regulation S and U.S. federal tax law), together with all such certifications as may be required by the Trustee in its sole discretion and in accordance with the provisions of the Trust Agreement. Within a reasonable period after such deposit is properly made, the Trustee shall instruct the Common Depositary for Clearstream, Luxembourg and Euroclear, as the case may be, or a replacement clearing agency to increase the number of Trust Preferred Securities represented by the Permanent Global Certificate held by such clearing agency.

Any certificated Company Preferred Security issued in exchange for an interest in a Permanent Global Certificate will bear the legend restricting transfer that is borne by the Permanent Global Certificate.

### **Form and Denomination**

The Trust Preferred Securities will be offered and sold outside the United States in reliance on Regulation S under the Securities Act and will be issued in the form of a temporary global bearer certificate without coupons (the "Temporary Regulation S Global Certificate"). On the 40th day after the later of the closing date and the completion of the distribution of the Trust Preferred Securities (the "Restricted Period"), beneficial interests in the Temporary Regulation S Global Certificate will be exchanged for beneficial interests in the permanent global bearer certificate (the "Permanent Regulation S Global Certificate" and, together with the Temporary Regulation S Global Certificate, the "Global Certificates") upon certification as to non-U.S. beneficial ownership.

The Global Certificates will be deposited upon issuance with the Common Depositary for Clearstream, Luxembourg and Euroclear in each case for credit to an account of a direct or indirect participant of Clearstream, Luxembourg or Euroclear.

Except as set forth below, the Global Certificates may be transferred, in whole and not in part, only to another nominee of the Common Depositary or to a successor of the Common Depositary or its nominee. Beneficial interests in the Global Certificates may not be exchanged for Trust Preferred Securities in certificated form except in the limited circumstances described below. See “—Exchange of Interests in Global Certificates for Certificated Securities”.

Trust Preferred Securities will be subject to certain restrictions on transfer and will bear restrictive legends as described under “Notice to Investors”. In addition, transfer of beneficial interests in the Global Certificates will be subject to the applicable rules and procedures of Clearstream, Luxembourg and Euroclear, as the case may be, and its direct or indirect participants, which may change from time to time.

## **Depositary Procedures**

### ***Clearstream, Luxembourg***

Clearstream, Luxembourg has advised as follows:

Clearstream, Luxembourg was incorporated as a limited liability company under Luxembourg law. Clearstream, Luxembourg is owned by Cedel International, *société anonyme*, and Deutsche Börse AG. The shareholders of these two entities are banks, securities dealers and financial institutions.

Clearstream, Luxembourg holds securities for its customers and facilitates the clearance and settlement of securities transactions between Clearstream, Luxembourg customers through electronic book-entry changes in accounts of Clearstream, Luxembourg customers, thus eliminating the need for physical movement of certificates. Clearstream, Luxembourg provides to its customers, among other things, services for safekeeping, administration, clearance and settlement of internationally traded securities, securities lending and borrowing and collateral management. Clearstream, Luxembourg interfaces with domestic markets in a number of countries. Clearstream, Luxembourg has established an electronic bridge with the Euroclear Operator, to facilitate settlement of trades between Clearstream, Luxembourg and Euroclear.

As a registered bank in Luxembourg, Clearstream, Luxembourg is subject to regulation by the Luxembourg Commission for the Supervision of the Financial Sector. Clearstream, Luxembourg customers are recognised financial institutions around the world, including underwriters, securities brokers and dealers, banks, trust companies and clearing corporations.

Distributions with respect to the Trust Preferred Securities held beneficially through Clearstream, Luxembourg will be credited to cash accounts of Clearstream, Luxembourg customers in accordance with its rules and procedures, to the extent received by Clearstream, Luxembourg.

### ***The Euroclear system***

Euroclear has advised as follows:

Euroclear was created in 1968 to hold securities for its participants and to clear and settle transactions between its participants through simultaneous electronic book-entry delivery against payment, thereby eliminating the need for physical movement of certificates and any risk from lack of simultaneous transfers of securities and cash. Euroclear includes various other services, including securities lending and borrowing, and interfaces with domestic markets in several countries. The Euroclear system is owned by Euroclear Clearance System Public Limited Company (ECSplc) and operated through a license agreement by the Euroclear Operator, a bank incorporated under the laws of the Kingdom of Belgium.

Euroclear participants include banks (including central banks), securities brokers and dealers and other professional financial intermediaries and may include the initial purchasers. Indirect access to Euroclear is also available to others that clear through or maintain a custodial relationship with a Euroclear participant, either directly or indirectly.

The Euroclear Operator is regulated and examined by the Belgian Banking and Finance Commission and the National Bank of Belgium.

Securities clearance accounts and cash accounts with the Euroclear Operator are governed by the Terms and Conditions Governing Use of Euroclear and the related Operating Procedures of the Euroclear system, and govern transfers of securities and cash within Euroclear, withdrawals of securities and cash for Euroclear, and receipts of payments with respect to securities in Euroclear. All securities in Euroclear are held on a fungible basis without attribution of specific certificates to specific securities clearance accounts. The Euroclear Operator acts under the terms and conditions only on behalf of Euroclear participants and has no record of or relationship with Persons holding through Euroclear participants.

#### **Exchange of Interests in Global Certificates for Certificated Securities**

A Global Certificate is exchangeable for Trust Preferred Securities in registered certificated form if either of Clearstream, Luxembourg or Euroclear notifies the Company that it is unwilling or unable to continue providing its services as a securities clearing system for the Global Certificates and the Trust and the Company thereupon fails to appoint a successor securities clearing system. In all cases, certificated Trust Preferred Securities delivered in exchange for any Global Certificates or beneficial interests therein will be registered in the names and issued in any approved denominations, requested by or on behalf of Clearstream, Luxembourg or Euroclear (in accordance with their customary procedures), as the case may be, and will bear the restrictive legend referred to in "Notice to Investors".

#### **Global Clearance and Settlement Procedures**

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 eurosecurities in global form.

#### **Payments; Certifications by Holders of the Temporary Regulation S Global Certificate**

On or after the expiration of the Restricted Period, a certificate must be provided by or on behalf of a holder of a beneficial interest in the Temporary Regulation S Global Certificate, certifying that the beneficial owner of the interest in such Temporary Regulation S Global Certificate is not a U.S. Person as defined in Regulation S and U.S. federal tax law. Unless such certificate is provided, (i) the holder of such beneficial interest will not receive any payments of dividends, redemption price or any other payment with respect to such holder's beneficial interest in the Temporary Regulation S Global Certificate, (ii) such beneficial interest may not be exchanged for a beneficial interest in the Permanent Regulation S Global Certificate and (iii) settlement of trades with respect to such beneficial interest will be suspended.

#### **Transfers and Issue of Definitive Trust Preferred Securities**

Definitive Trust Preferred Securities may be transferred upon the surrender of such definitive Trust Preferred Securities, together with the form of transfer endorsed thereon duly completed and executed, at the specified offices of the Fiscal Agent in Luxembourg and/or at the offices of the Paying Agent in The Netherlands. The Paying Agent is BNP Paribas Luxembourg. Rabobank Nederland, in The Netherlands, has also been named a Paying Agent. In the case of a transfer of part only of a definitive Trust Preferred Security, a new definitive Trust Preferred Security in respect of the balance not transferred will be issued to the transferor within seven Business Days of receipt of such form of transfer, by uninsured post at the risk of the holder to the address of the holder appearing in the register to be established with respect to the Trust Preferred Securities. Each new definitive Trust Preferred Security to be issued upon a transfer of a definitive Trust Preferred Security will, within seven Business Days of receipt of such form of transfer, be sent by uninsured post at the risk of the holder entitled to the definitive Trust Preferred Security to such address as may be specified in such form of transfer.

Registration of transfer of definitive Trust Preferred Securities will be effected without charge by or on behalf of the Trust by the Fiscal Agent, but upon payment (or the giving of such indemnity as

the Fiscal Agent may require) in respect of any tax or other governmental charges that may be imposed in relation to it.

No holder of a definitive Trust Preferred Security may require the transfer of a Trust Preferred Security to be registered during the period of 15 days ending on the due date for any payment of redemption or liquidation amounts on the Trust Preferred Securities.

All transfers of definitive Trust Preferred Securities and entries in the register will be made subject to the provisions concerning transfers of Trust Preferred Securities set out in the Agency Agreement relating to the Trust Preferred Securities, a copy of which is available to prospective investors upon request to the Bank. The regulations may be changed by the Trust with the prior written approval of the Trustee.

### **Payments and Paying Agents**

Payments in respect of the Trust Preferred Securities in bearer form shall be made only at the office of the Principal Paying Agent and at the offices of such other Paying Agents outside the United States as the Company may from time to time appoint. Payments in respect of the Trust Preferred Securities represented by a Global Certificate shall be made to the Common Depositary for Clearstream, Luxembourg and Euroclear by wire transfer and the Common Depositary will then proceed to credit the relevant accounts of the participants of Clearstream, Luxembourg and Euroclear on the applicable Dividend Payment Dates or redemption dates. Payments in respect of Trust Preferred Securities not evidenced by a Global Certificate shall be made by wire transfer, direct deposit or check mailed to the address of the holder entitled thereto as such address shall appear on the securities register. The Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Trustee and the Company. In the event that either BNP Paribas or Rabobank Nederland shall no longer be a Paying Agent, the Company shall appoint a successor (which shall be a bank or trust company acceptable to the Trustee) to act as Paying Agent. For so long as any of the Trust Preferred Securities remain outstanding, the Trust shall maintain a paying agent in The Netherlands.

### **Prescription**

Any claims to declared and payable Dividends or to the liquidation preference will become void unless presented for payment within a period of six years, with respect to Dividends, and ten years, with respect to the liquidation preference, from the date on which such payment becomes due.

### **Amendment and Termination of Trust Agreement**

The Company and the Trustee may, at any time and from time to time, enter into one or more agreements supplemental to the Trust Agreement without the consent of the holders of the Trust Preferred Securities: (i) to evidence the succession of another entity to the Company and the assumption by any such successor of the covenants of the Company in the Trust Agreement; (ii) to add to the covenants of the Company for the benefit of the holders of the Trust Preferred Securities, or to surrender any right or power therein conferred upon the Company; (iii) to correct or supplement any provision in the Trust Agreement that may be defective or inconsistent with any other provision therein or to make any other provisions with respect to matters or questions arising under the Trust Agreement; or (iv) to cure any ambiguity or correct any manifest error, provided, that any of the above actions shall not materially adversely affect the interests of the holders of Trust Preferred Securities. Any other amendment of or agreement supplemental to the Trust Agreement must be approved by holders of a majority of the then outstanding Trust Preferred Securities.

The Trust will be dissolved upon the earliest to occur of (i) the date that all outstanding Trust Preferred Securities have been redeemed and the redemption price thereof has been paid in full; (ii) a final distribution in respect of the Company Preferred Securities and delivery of such distribution has been made to the holders of the Trust Preferred Securities; (iii) withdrawal of all of the Company Preferred Securities from the Trust; and (iv) commencement of a liquidation of the Company. In addition, the Company may instruct the Trustee to dissolve the Trust and distribute the Company Preferred Securities on a *pro rata* basis to the holders of Trust Preferred Securities if (i) the Trust, at any time, is subject to United States federal income tax with respect to its ownership of the Company Preferred Securities, (ii) the Trust is subject to more than a *de minimis* amount of other taxes, duties or governmental charges, or (iii) the Trust is or will be considered an "investment company" that is

required to be registered under the 1940 Act on or after the date of the issuance of the Trust Preferred Securities. The Trust Agreement will terminate upon the filing of a certificate of cancellation as provided in Section 3810 of the Delaware Business Trust Statute.

The Trustee shall notify the Paying Agent and the holders of the Trust Preferred Securities (the latter, in the manner described below under "—Notices") of any such amendment or termination of the Trust Agreement within a reasonable period of time. In the event the Trust is liquidated and Company Preferred Securities are distributed to beneficial holders of Trust Preferred Securities, the Company and the Bank will use all reasonable efforts to obtain a listing of the Company Preferred Securities on any exchange on which the Trust Preferred Securities were listed.

#### **Expenses of the Trust**

All charges or expenses of the Trust, including the charges and expenses of the Trustee, the Fiscal Agent or any Paying Agent, will be paid by the Branch; provided that, if the Trustee incurs fees, charges or expenses, for which it is not otherwise liable under the Trust Agreement, at the request of a holder of Trust Preferred Securities or other person, such holder or other person will be liable for such fees, charges and expenses.

#### **Expenses of the Paying Agent**

If the Paying Agent incurs fees, charges or expenses, for which it is not otherwise liable under the Agency Agreement, at the request of a holder of Trust Preferred Securities or other person, such holder or person will be liable for such fees, charges or expenses.

#### **Resignation and Removal of the Trustee**

The Trust shall at all times have a Trustee that is a bank or trust company that has its principal place of business in the State of Delaware having a combined capital and surplus of \$50,000,000 and being subject to supervision or examination by Federal or State authorities. If the Trustee ceases to be eligible, it will resign.

The Trustee may at any time resign as trustee under the Trust Agreement by notice of its election to do so delivered to the Company, such resignation to take effect upon the appointment of a qualified successor trustee and its acceptance of such appointment. The Trustee may at any time be removed by the Company by notice of such removal delivered to the Trustee, such removal to take effect upon the appointment of such successor trustee and its acceptance of such appointment.

In case at any time the Trustee shall resign or be removed, the Company shall, within 45 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor trustee, which shall be a bank or trust company, or an affiliate of a bank or trust company, with its principal place of business in the State of Delaware and a combined capital surplus of at least \$50 million.

#### **Notices**

Notices to the holders of the Trust Preferred Securities will be given by delivery of the relevant notice to Clearstream, Luxembourg and Euroclear for so long as the Trust Preferred Securities clear through Euroclear and Clearstream, Luxembourg and any other relevant securities clearing system for communication by each of them to entitled participants. In addition, notices will be published in one English language daily newspaper of general circulation in Europe and, so long as the Trust Preferred Securities are listed on the Official Segment of the Stock Market of Euronext Amsterdam N.V. and the rules of such exchange so require, in a daily newspaper of general circulation in the Netherlands (which is expected to be the *Het Financieele Dagblad*), with notice thereof given to Euronext Amsterdam N.V., and in the *Officiële Prijscourant*.

#### **Governing Law**

The Trust Agreement and the Trust Preferred Securities will be governed by and construed in accordance with the laws of the State of Delaware.

## DESCRIPTION OF THE COMPANY PREFERRED SECURITIES

The following is a summary of certain provisions of the Company Preferred Securities, and is qualified in its entirety by reference to the terms and provisions of the Company Agreement. A copy of the Company Agreement is available to prospective investors upon request to the Bank.

### General

The Company Preferred Securities are preferred limited liability company interests in the Company, the terms of which are set forth in the Company Agreement. When issued, the Company Preferred Securities will be validly issued, and, subject to certain obligations that may arise under the Delaware Limited Liability Company Act, no additional payments will be required pursuant to the Delaware Limited Liability Company Act for such securities to represent limited liability company interests in the Company. The holders of the Company Preferred Securities will have no pre-emptive rights with respect to any limited liability company interests in the Company or any other securities of the Company convertible into or carrying rights or options to purchase any such securities. The Company Preferred Securities will not be convertible into the Company Common Securities or any other class or series of limited liability company interests in the Company and will not be subject to any sinking fund or other obligation of the Company for their repurchase or retirement.

The Company Preferred Securities will be issued in definitive form only in denominations of €1,000 and integral multiples thereof. The aggregate liquidation preference of the Company Preferred Securities is €600,000,000. The Company will be precluded by the Company Agreement from issuing any equity interests in the Company of any class or series except for the Company Common Securities, the Company Preferred Securities and the Company Parity Preferred Securities. Accordingly, the Company may not issue any equity securities that rank senior to the Company Preferred Securities. The Company may issue Company Parity Preferred Securities, whether as a new series or as additional shares of the Company Preferred Securities, without any requirement that the approval of the holders of the Company Preferred Securities first be obtained; provided that the approval of a majority of the Independent Directors (or of the Independent Director if there is only one Independent Director) will be required for any issuance of Company Parity Preferred Securities.

### Dividends

Dividends on the Company Preferred Securities will be payable from the date of initial issuance on a noncumulative basis annually in arrears on 24 January of each year at a fixed rate per annum on the liquidation preference equal to 6.342%, commencing 24 January 2003 and except that the last such Dividend Payment Date shall be 24 January 2012 (calculated on an Actual/Actual Basis), and (ii) thereafter quarterly on 24 January, 24 April, 24 July and 24 October of each year, commencing on 24 April 2012 at a variable rate per annum on the liquidation preference equal to 2.33% above three-month EURIBOR (calculated on an Actual/360 Basis) determined on the second Business Day prior to the first day of the related Dividend Period (each a "Determination Date" for such Dividend Period).

Each such date of payment is a "Dividend Payment Date" and each period from and including a Dividend Payment Date, or the Issue Date as applicable, to but not including the next Dividend Payment Date, is a "Dividend Period". If any Dividend Payment Date falls on a day that is not a Business Day, dividends relating to that Dividend Payment Date will be payable on the next succeeding Business Day unless that day falls in the next calendar month, in which case such dividends will be payable on the immediately preceding Business Day, without any adjustment, interest or further payment as a result thereof. Dividends on the Company Preferred Securities will be mandatorily due and payable on a Dividend Payment Date and with respect to the related Dividend Period in the circumstances described under "—Mandatory Dividends" below. If dividends on the Company Preferred Securities on a Dividend Payment Date are not mandatorily due and payable, then, if the Bank delivers, on or before the tenth Business Day immediately preceding such Dividend Payment Date, a Dividend Limitation Notice to the Company not to pay full dividends on such Dividend Payment Date or to pay less than full dividends on such Dividend Payment Date, dividends payable on the related Dividend Payment Date will be limited as provided in such Dividend Limitation Notice (see "—Dividend Limitation Notice" below).

Commencing on 24 January 2012, the Fiscal Agent will cause the holders of the Company Preferred Securities and Euronext Amsterdam N.V., or any other stock exchange on which the Trust Preferred Securities are listed, to be notified of the rate of interest and the amount of interest payable on each Trust Preferred Security as soon as possible after their determination. Such information will also be made available at the offices of the Paying Agents in Luxembourg and The Netherlands. As used herein:

*"Calculation Agent"* means the calculation agent, which will initially be BNP Paribas Luxembourg.

*"EURIBOR"* for a Determination Date means the European Inter-Bank Offered Rate applicable to three (3) month deposits in euro determined by the Calculation Agent that appears on Telerate pages 248-249, or any successor page, at approximately 11:00 a.m., Central European time, on the second Business Day before the first day of the relevant Dividend Period. If that rate is not available on that page, the rate will be determined by the Principal Paying Agent based upon the arithmetic mean of quotations received from at least four reference banks selected by the Principal Paying Agent after consultation with the Bank.

All percentages resulting from any calculations on the Company Preferred Securities will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with five one-millionths of a percentage point rounded upward (e.g., 9.876545% (or 0.09876545) being rounded to 9.87655% (or 0.0987655)), and all dollar amounts used in or resulting from such calculation will be rounded to the nearest .001 dollar (with 0.0005 being rounded upward).

#### ***Mandatory Dividends***

The Company will be required to pay full dividends on the Company Preferred Securities on each Dividend Payment Date occurring during the one-year period beginning on and including the date on which the Bank declares a dividend on the Bank Ordinary Shares (including a dividend consisting solely of additional Bank Ordinary Shares). There is no similar requirement to pay dividends on the Company Preferred Securities when the Bank redeems, repurchases or otherwise acquires Bank Ordinary Shares.

Additionally, the Company will be required to pay dividends on the Company Preferred Securities on each Dividend Payment Date occurring during the one-year period beginning on and including the date on which the Bank declares Discretionary Dividends (it being understood that, if a Discretionary Dividend is paid on the Company Preferred Securities on a Dividend Payment Date, the Company shall not as a consequence be required to pay an additional dividend on the Company Preferred Securities on the same Dividend Payment Date). There is no similar requirement to pay dividends on the Company Preferred Securities when the Bank or a subsidiary of the Bank redeems, repurchases or otherwise acquires Bank Parity Securities. In order to calculate the amount of dividends required to be paid on the Company Preferred Securities on a Dividend Payment Date pursuant to this paragraph:

- (i) Prior to each Dividend Payment Date, the Company will calculate, with respect to each payment of a Discretionary Dividend paid on an Underlying Security during the one-year period ending on and including such current Dividend Payment Date, the Notional Dividend Amount;
- (ii) The Company will then aggregate the Notional Dividend Amounts calculated pursuant to clause (i);
- (iii) An annual (or quarterly, as appropriate) proportion of such aggregate of Notional Dividend Amounts pursuant to clause (ii) shall be the amount of dividends required to be paid under this paragraph on the Company Preferred Securities on such Dividend Payment Date,

*provided*, that if a Discretionary Dividend is paid on more than one Underlying Security on the same date, then the proportion described above will be calculated with reference to the Underlying Security as to which the Discretionary Dividend represented the higher or highest, as applicable, proportion of full dividends thereon.

If a Dividend Payment Date is a Mandatory Dividend Payment Date, the Company will be required to pay the Mandatory Dividend Payment Amount as dividends on such Mandatory Dividend Payment Date irrespective of whether (x) a Dividend Limitation Notice is delivered, (y) a Capital



Deficiency Event has occurred or (z) interest is paid on the Subordinated Note or any successor Replacement Notes.

For purposes of the foregoing:

*"Bank Ordinary Shares"* means (i) the ordinary shares of the Bank and (ii) any other shares of the Bank's capital stock ranking junior to the Bank Parity Preferred Shares, where such other shares qualify as Tier 1 capital of the Bank on a consolidated basis under Applicable Banking Regulations.

*"Bank Parity Preferred Shares"* means any preferred or preference shares issued by the Bank.

*"Bank Parity Guarantees"* means the Bank's guarantees (whether through an agreement or instrument labelled as a guarantee, as a support agreement, or with some other name but with an effect similar to a guarantee or support agreement) of preferred securities or preferred or preference shares issued by any of its subsidiaries, if such guarantees or support agreements rank *pari passu* with or junior to the Bank's obligations under the Support Agreement. The term "Bank Parity Guarantees" includes the Contingent Support Agreement, dated as of 5 December 1997 and as it may be amended from time to time in accordance with its terms, between the Bank and BNP U.S. Funding LLC relating to BNP U.S. Funding LLC's 7.738% Noncumulative Preferred Securities, Series A, the Support Agreement, dated as of 27 October 2000 and as it may be amended from time to time in accordance with its terms, between the Bank and BNP Paribas Capital Preferred L.L.C. relating to BNP Paribas Capital Preferred L.L.C.'s 9.003% Noncumulative Company Preferred Securities, the Support Agreement, dated 5 October 2001 and as it may be amended from time to time in accordance with its terms, between the Bank and BNP PARIBAS Capital Preferred II L.L.C. relating to BNP PARIBAS Capital Preferred II L.L.C.'s 7.00% Noncumulative Company Preferred Securities and the Support Agreement, dated 23 October 2001, and as it may be amended from time to time in accordance with its terms, between the Bank and BNP PARIBAS Capital Preferred III L.L.C. relating to BNP PARIBAS Capital Preferred III L.L.C.'s 6.625% Noncumulative Company Preferred Securities.

*"Bank Parity Securities"* means the Bank Parity Preferred Shares, the Bank Parity Guarantees and any securities issued by a subsidiary of the Bank that are guaranteed by the Bank under a Bank Parity Guarantee.

*"Discretionary Dividend"* means any dividend paid on the Company Preferred Securities or any class of Bank Parity Securities (including a dividend consisting solely of Bank Ordinary Shares) that was not required to be paid solely as a result of a dividend or other payment having been made on the Company Preferred Securities, any other class of Bank Parity Securities or any Bank Ordinary Shares. Dividends paid on a Dividend Payment Date for the Company Preferred Securities or any Bank Parity Securities may be partially Discretionary Dividends and partially dividends that are not Discretionary Dividends because they are required to be paid. The term "Discretionary Dividend" includes such dividends only to the extent not required to be paid. If a Discretionary Dividend on one class of Bank Parity Securities would cause a mandatory dividend to be payable on another class of Bank Parity Securities if such Bank Parity Securities had terms identical to the terms of the Company Preferred Securities, then any dividend paid on such other Bank Parity Securities will constitute a Discretionary Dividend only to the extent that it is greater than the Mandatory Dividend Payment Amount payable as a result of the first Discretionary Dividend.

*"Mandatory Dividend Payment Date(s)"* means each Dividend Payment Date on which some amount of dividends on the Company Preferred Securities is required to be paid pursuant to one or more of the first two paragraphs of this subsection.

*"Mandatory Dividend Payment Amount"* means, as to a Mandatory Dividend Payment Date, the amount of dividends required to be paid on such Mandatory Dividend Payment Date.

*"Notional Dividend Amount"* means, as to each calculation pursuant to clause (i) of the second paragraph of this subsection, an amount of dividends as to a current Dividend Payment Date on the Company Preferred Securities representing the same proportion of full annual dividends as is represented by the related Discretionary Dividend on the related Underlying Security as a proportion of full annual dividends thereon on the related Dividend Payment Date.

*"Underlying Security"* means, in connection with the calculation of the Notional Dividend Amount to be taken into account in determining the amount of dividends required to be paid on the Company Preferred Securities on a Dividend Payment Date because of a payment of Discretionary Dividends, the series or class of Bank Parity Securities or the Company Preferred Securities, as applicable, as to which such Discretionary Dividends were paid.

#### ***Dividend Limitation Notice***

On or before the tenth Business Day immediately preceding a Dividend Payment Date, the Bank, as holder, through the Branch, of the Company Common Securities, may give notice to the Company, the Paying Agent and the holders of the Company Preferred Securities and the Trust Preferred Securities (a "Dividend Limitation Notice") that the Company will pay no dividends or less than full dividends on such Dividend Payment Date, in which case no dividends or less than full dividends shall become due and payable on such Dividend Payment Date as set forth in the applicable Dividend Limitation Notice. The Bank may give a Dividend Limitation Notice in its sole discretion and for any reason, except that a Dividend Limitation Notice as to a Mandatory Dividend Payment Amount payable on a Mandatory Dividend Payment Date shall have no force or effect.

In the case of the Company Preferred Securities, such Dividend Limitation Notice shall be given in writing by mail to each registered holder of the Company Preferred Securities (initially only the Trustee on behalf of the Trust), and in the case of the Trust Preferred Securities, such Dividend Limitation Notice shall be given in the manner described under "Description of the Trust Preferred Securities—Notices".

#### ***Additional Amounts***

If at any time the Company, the Branch, any other obligor on the Subordinated Notes, or any issuer of a Replacement Note or the Trust is required to withhold any taxes, duties or other governmental charges with respect to payment of interest on the Subordinated Notes or any Replacement Notes or dividends on the Company Preferred Securities or distributions on the Trust Preferred Securities (collectively, "Relevant Tax") imposed or levied by France, the jurisdiction in which the Branch or an issuer of any Replacement Notes held by the Company is located, or any authority of any of those jurisdictions that has the power to tax (a "Relevant Jurisdiction"), the Company will be required to pay as additional amounts included in the dividends otherwise then due and payable such amounts as shall be required ("Additional Amounts") so that the net amount received by each holder of Company Preferred Securities and Trust Preferred Securities after the withholding of any such Relevant Tax will not be less than the gross amount of dividends or distributions then otherwise due and payable. However, the Company will not be required to pay Additional Amounts if the Relevant Jurisdiction is France, the United States or a state thereof, (i) to the extent that the Relevant Tax is imposed or levied because the holder of Trust Preferred Securities or Company Preferred Securities (or the beneficial owner of such securities), in each case other than the Trust in the case of the Company Preferred Securities, has some connection with the Relevant Jurisdiction, other than merely being a holder (or beneficial holder) of those securities or (ii) to the extent that the Relevant Tax is imposed or levied because that holder (or beneficial owner) has not made a declaration of non-residence in, or other lack of connection with, the Relevant Jurisdiction or any similar claim for exemption, if the Company or its agent has given the beneficial owner or its nominee at least 60 days' prior written notice of, and opportunity to make, the declaration or claim. In addition, no Additional Amounts will be payable if the Relevant Tax is imposed on a payment to an individual and is required pursuant to any European Union directive on the taxation of savings implementing the conclusions of the ECOFIN Council meeting of 26-27 November 2000 or any law implementing or complying with, or introduced in order to conform to, such a directive or if a holder would have been able to avoid such a Relevant Tax by accepting payment of such dividends from another paying agent in a member state of the European Union. The Company undertakes that, if the conclusions of the ECOFIN Council meeting of 26-27 November 2000 are implemented, it will ensure that it maintains a paying agent in a European Union member state that will not be obliged to withhold or deduct tax pursuant to such directive.

#### ***Ranking***

##### ***Dividends***

The Company Preferred Securities ordinarily will rank senior to the Company Common Securities as to payment of dividends. However, the dividend preference of the Company Preferred Securities will at the Bank's option shift to the Company Common Securities on a Dividend Payment

Date that is not a Mandatory Dividend Payment Date to the extent that dividends are not then paid on the Company Preferred Securities because a Dividend Limitation Notice has been delivered with respect to such Dividend Payment Date (see “—Dividends”), with the consequence that amounts received by the Company on the Subordinated Note or any successor Replacement Notes may be distributed as dividends to the Branch as holder of the Company Common Securities instead of being paid to the holders of the Company Preferred Securities with respect to the Company Preferred Securities. The Bank will have discretion as to whether full dividends, partial dividends or no dividends are paid on the Company Preferred Securities on each Dividend Payment Date that is not a Mandatory Dividend Payment Date. See “—Dividends—Mandatory Dividends”.

If full dividends on the Company Preferred Securities are paid on any Dividend Payment Date and, after giving effect to such payment, the Company has additional funds available for the payment of dividends, the Company, in its discretion, may apply such additional funds to pay dividends on the Company Common Securities.

### ***Circumstances Where Company May Be Liquidated***

If the Bank is liquidated, whether voluntarily or involuntarily (and whether in connection with the occurrence of a Bankruptcy Event or otherwise), the Company will be liquidated. The Bank, acting through the Branch, will not cause the Company to liquidate so long as the Company Preferred Securities are outstanding unless the Bank is also liquidating. Under the Company Agreement and applicable law, holders of Trust Preferred Securities or Company Preferred Securities will not have the ability to force or initiate commencement of a liquidation of the Company unless the Bank is also liquidating. The Company will be precluded in the Company Agreement from incurring any indebtedness and, accordingly, does not anticipate having creditors in the ordinary course of business who could initiate the commencement of an involuntary bankruptcy proceeding. In the event that the liquidation of the Company is commenced, the Trust will be dissolved and will distribute to the holders of Trust Preferred Securities, after satisfaction of claims of creditors of the Trust, if any, as required by law, the Company Preferred Securities held by the Trust. Accordingly, it is expected that investors will receive liquidation distributions only in connection with a concurrent liquidation of the Bank and the Company.

### ***Liquidation Preference***

In the event of any voluntary or involuntary dissolution, liquidation or winding up of the Company, after satisfaction of liabilities to creditors, if any, the holders of the Company Preferred Securities will be entitled to receive out of assets of the Company available for distribution in liquidation, before any liquidation distribution is made on the Company Common Securities, liquidation distributions in respect of the Company Preferred Securities equal to the “Liquidation Claim Amount”. That amount, for each €1,000 liquidation preference of Company Preferred Securities, is equal to (i) €1,000, *plus* (ii) unpaid dividends, if any, thereon with respect to the current Dividend Period accrued on a daily basis through the date of liquidation, *plus* (iii) unpaid definitive dividends for any prior Dividend Period, but without interest and without accumulation of unpaid nondefinitive dividends for any prior Dividend Period, and including any Additional Amounts required to be paid.

In a liquidation of the Company that is concurrent with a liquidation of the Bank, the Company's only assets available for making liquidating distributions on the Company Preferred Securities will be amounts realised by the Company pursuant to the undertakings and covenants of the Bank in the Support Agreement. As a consequence of the foregoing and of the subordinated status of the obligations of the Bank under the Support Agreement, it is acknowledged and agreed that, in a liquidation of the Company that is concurrent with a liquidation of the Bank, holders of Company Preferred Securities may not receive an amount exceeding the amount to which such holders would have been entitled had they instead owned Bank Parity Preferred Shares having the same liquidation preference and dividend rights as the Company Preferred Securities if such Bank Parity Preferred Shares were permitted under applicable law.

### ***Voting Rights***

Except as expressly required by applicable law, or except as indicated below or under “—Amendment and Termination of Company Agreement”, the holders of Company Preferred Securities will not be entitled to vote. In the event the holders of Company Preferred Securities are

entitled to vote as indicated below, each €1,000 liquidation preference of Company Preferred Securities shall be entitled to one vote on matters on which holders of Company Preferred Securities are entitled to vote. The Bank or an affiliate of the Bank will not be entitled to vote any Company Preferred Securities that they hold.

If full dividends are not paid on any Dividend Payment Date, the holders of the Company Preferred Securities shall have the right to elect two persons of their choosing as additional directors (up to a maximum total of two additional Independent Directors). Each person so elected shall be deemed to be an Independent Director. Such right may be exercised by the holders of a majority (by liquidation preference) of the Company Preferred Securities called for such purpose (which the Company Agreement will provide shall be called at the request of any holder of the Company Preferred Securities), and shall continue until full dividends have been paid on the Company Preferred Securities for a one-year period. Any vacancy in the office of an Independent Director during such period may be filled only by holders of the Company Preferred Securities voting as set forth above.

Whenever entitled to vote, as described above, holders of Company Preferred Securities may vote at a meeting called for such purpose in person or by proxy. Whenever a vote, consent or approval of holders is permitted or required under the Company Agreement, such vote, consent or approval may, however, be given either at a meeting of holders or by written consent.

At a meeting, each holder of Company Preferred Securities may authorise any person to act for it by proxy on all matters in which each such holder is entitled to participate, including waiving notice of any meeting or voting or participating at a meeting. Each proxy must be signed by the holder of Company Preferred Securities or its attorney-in-fact. Every proxy shall be revocable at the pleasure of the holder of Company Preferred Securities executing it at any time before it is voted.

The Board of Directors may cause a notice of any meeting at which holders of Company Preferred Securities are entitled to vote, or of any matter upon which action may be taken by written consent of such holders of Company Preferred Securities, to be mailed to each holder of record of the Company Preferred Securities. Each such notice shall include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any action proposed to be taken at such meeting on which such holders of Company Preferred Securities are entitled to vote or of such matters upon which written consent is sought and (iii) instructions for the delivery of proxies or consents. The Trustee, as holder of the Company Preferred Securities, will act for the holders of the Trust Preferred Securities in accordance with the provisions of the Trust Agreement. See "Description of the Trust Preferred Securities—Voting Rights".

#### **Director Approval**

The Company Agreement will provide that, for so long as any Company Preferred Securities or Company Parity Preferred Securities are outstanding, certain actions by the Company must be approved by both a majority of the Board of Directors as a whole and by a majority of the Independent Directors (or by the Independent Director if there is only one Independent Director). See "The Company—Management of the Company—Independent Directors".

#### **Redemption**

The Company Preferred Securities are not redeemable at the option of the holders at any time and are not redeemable at the option of the Company prior to the Dividend Payment Date scheduled to occur on 24 January 2012, except in whole upon the occurrence of a Tax Event, an Investment Company Act Event or a Capital Disqualification Event (each as defined below).

On or after the Dividend Payment Date scheduled to occur on 24 January 2012, the Company Preferred Securities may be redeemed at the option of the Company, in whole or in part, on any Dividend Payment Date.

The redemption price for such redemption will be an amount equal to (i) 100% of the liquidation preference of the Company Preferred Securities being redeemed, *plus* (ii) an amount equal to unpaid dividends, if any, thereon with respect to the current Dividend Period accrued on a daily basis through the date fixed for redemption, *plus* (iii) an amount equal to unpaid Definitive Dividends for any prior Dividend Period, without interest and without accumulation of unpaid nondefinitive dividends for any prior Dividend Period *plus* (iv) any Additional Amounts, (the "Base Redemption Price").

The Company will also have the right at any time prior to the Dividend Payment Date scheduled to occur on 24 January 2012, upon the occurrence of a Tax Event, an Investment Company Act Event or a Capital Disqualification Event, to redeem Company Preferred Securities, in whole (but not in part). The redemption price per Company Preferred Security for such redemptions will be the greater of (i) the Make Whole Amount (as defined below) and (ii) the Base Redemption Price.

In the event that fewer than all the outstanding Company Preferred Securities are to be redeemed, the securities to be redeemed shall be determined by lot or *pro rata* as may be determined by the Branch, as holder of the Company Common Securities, in its sole discretion to be equitable, provided that such method satisfies any applicable requirements of any securities exchange on which the Company Preferred Securities may then be listed. The Company shall promptly notify the Fiscal Agent for the Company Preferred Securities in writing of the securities selected for redemption and, in the case of any partial redemption, the aggregate liquidation preference thereof to be redeemed.

Any redemption of the Company Preferred Securities is subject to the Company having given not less than 30 nor more than 60 days' notice of its intent to redeem the Company Preferred Securities.

Any redemption of the Company Preferred Securities is subject to compliance with applicable regulatory requirements, including the prior approval of the *Secrétariat général de la Commission bancaire*, if then required.

The Company Preferred Securities will not be subject to any sinking fund or mandatory redemption.

As used herein:

*"Capital Disqualification Event"* means the determination by the Bank after consultation with the *Secrétariat général de la Commission bancaire* that the Company Preferred Securities cannot be included in calculating the Tier 1 capital of the Bank on a consolidated basis under Applicable Banking Regulations.

*"Investment Company Act Event"* means the receipt by the Company of an opinion of a nationally recognised law firm in the United States experienced in such matters to the effect that there is more than an insubstantial risk that the Company or the Trust is or will be an "investment company" within the meaning of the 1940 Act.

*"Make Whole Amount"* means an amount, as determined by the Quotation Agent, equal to (i) the present value of 100% of the liquidation preference of the Company Preferred Securities (that is €1,000 per Company Preferred Security) discounted from the First Call Date, *plus* (ii) the present values of scheduled annual noncumulative dividend payments from the Special Event Redemption Date to and including the First Call Date (assuming in each case that dividends are not restricted by delivery of a Dividend Limitation Notice or occurrence of a Bankruptcy Event at any relevant time), *plus* (iii) any unpaid definitive dividends with respect to prior Dividend Periods without interest and without accumulation of unpaid nondefinitive dividends for any prior Dividend Period. The present values calculated in (i) and (ii) above shall be calculated by discounting the relevant amounts to the Special Event Redemption Date on an annual basis at the Adjusted Yield. For purposes of determining the Make Whole Amount:

*"Adjusted Yield"* means (a) the German Bund Rate plus (b) 0.50%.

*"Calculation Date"* means the third Business Day prior to the Special Event Redemption Date.

*"Comparable German Bund Issue"* means, with respect to any Special Event Redemption Date, the German Bund selected by the Quotation Agent as that which would be utilised, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of the Company Preferred Securities from the Special Event Redemption Date to the First Call Date.

*"Comparable German Bund Price"* means (a) the average of five Reference Bond Dealer Quotations, after excluding the highest and lowest such Reference Bond Dealer Quotations, or (b) if the Quotation Agent obtains fewer than five such Reference Bond Dealer Quotations, the average of all such Reference Bond Dealer Quotations.

*"First Call Date"* means 24 January 2012.

*"German Bund Rate"* means the rate equal to the annual yield to maturity of the Comparable German Bund Issue, assuming a price equal to the Comparable German Bund Price for the Calculation Date.

*"Primary Bond Dealer"* means any credit institution or financial services institution that regularly deals in bonds and other debt securities.

*"Quotation Agent"* means BNP Paribas Luxembourg, and its successors.

*"Reference Bond Dealer"* means either the Quotation Agent, or any other Primary Bond Dealer selected by the Quotation Agent after consultation with the Bank.

*"Reference Bond Dealer Quotations"* means the average, as determined by the Quotation Agent, of the bid and ask prices for the Comparable German Bund Issue (expressed in each case as a percentage of its principal amount, if appropriate) quoted in writing to the Quotation Agent by such Reference Bond Dealer at 11:00 a.m. (London time) on the Calculation Date.

*"Special Event Redemption Date"* means a redemption date for the Company Preferred Securities that occurs on or before the First Call Date in connection with the occurrence of a Tax Event, an Investment Company Act Event or a Capital Disqualification Event.

*"Tax Event"* means the receipt by the Bank of an opinion of a nationally recognised law firm or other tax advisor (which may be an accounting firm) in France or the United States, as appropriate, experienced in such matters to the effect that, as a result of (i) any amendment to, clarification of, or change (including any announced prospective change) in, the laws of treaties (or any regulations thereunder) of the United States or France or any political subdivision or taxing authority thereof or therein affecting taxation, (ii) any Administrative Action or (iii) any amendment to, clarification of, or change in the official position or the interpretation of any Administrative Action or any interpretation or pronouncement that provides for a position with respect to any Administrative Action that differs from the theretofore generally accepted position, in each case, by any regulatory body, irrespective of the manner in which such amendment, clarification, change, interpretation or pronouncement is made known, which amendment, clarification, change or Administrative Action is effective or which interpretation, pronouncement or decision is announced on or after the date of issuance of the Company Preferred Securities, there is more than an insubstantial risk that (a) the Company or the Trust is or will be subject to more than a *de minimis* amount of additional taxes, duties or other governmental charges, (b) the Bank is or will be required to pay more than a *de minimis* additional amount in respect of any taxes, duties or other governmental charges with respect to payments of interest on the Subordinated Notes or Replacement Notes or (c) the Company is or will be required to pay any Additional Amounts in respect of any taxes, duties or other governmental charges with respect to payments of dividends on the Company Preferred Securities.

### **Book Entry and Settlement**

If the Company Preferred Securities are distributed to holders of the Trust Preferred Securities in connection with the involuntary or voluntary liquidation, dissolution, winding up or termination of the Trust, the Company Preferred Securities will be issued in the form of one or more global certificates (each a "Global Security") registered in the name of the Common Depositary for Clearstream, Luxembourg and Euroclear or its nominee. For a description of Clearstream, Luxembourg and Euroclear and the specific terms of the depositary arrangement, see "Description of the Trust Preferred Securities—Form and Denomination" and "Description of the Trust Preferred Securities—Depositary Procedures". As of the date of this Offering Circular, the description herein of Clearstream, Luxembourg and Euroclear's book-entry system and Clearstream, Luxembourg and Euroclear's practices as they relate to purchases, transfers, notices and payments with respect to the Trust Preferred Securities will apply in all material respects to any Company Preferred Securities represented by one or more Global Securities.

### **Amendment and Termination of Company Agreement**

The Bank may, at any time and from time to time, enter into one or more agreements supplemental to the Company Agreement and the Support Agreement without the consent of the holders of the Company Preferred Securities: (i) to evidence the succession of another entity to the

Branch and the assumption by any such successor of the covenants of the Branch in the Company Agreement; (ii) to add to the covenants of the Bank or the Branch for the benefit of the holders of the Company Preferred Securities, or to surrender any right or power therein conferred upon the Bank or the Branch; (iii) to correct or supplement any provision in the Company Agreement that may be defective or inconsistent with any other provision therein or to make any other provisions with respect to matters or questions arising under the Company Agreement, provided that any such action shall not materially adversely affect the interests of the holders of the Company Preferred Securities; or (iv) to cure any ambiguity or correct any manifest error. Any other amendment of the Company Agreement must be approved by holders of a majority of the Company Preferred Securities.

The Company Agreement will terminate upon the latest to occur of the redemption of all of the Company Preferred Securities and the Company Parity Preferred Securities, a final distribution in respect of the Company Preferred Securities and the Company Parity Preferred Securities and delivery of such distribution to the holders of the Company Preferred Securities and the Company Parity Preferred Securities, respectively, or dissolution of the Company.

### **Expenses of the Company**

All charges or expenses of the Company will be paid by the Branch; provided that, if the Company incurs fees, charges or expenses, for which it is not otherwise liable under the Company Agreement, at the request of a holder of Company Preferred Securities or other person, such holder or other person will be liable for such fees, charges and expenses.

### **Notices**

Notices to holders of the Company Preferred Securities will be mailed by first-class mail, postage prepaid, to the holders' address appearing in the Company's records.

### **Governing Law**

The Company Agreement and the Company Preferred Securities are governed by, and shall be construed in accordance with, the laws of the State of Delaware.

## DESCRIPTION OF THE SUBORDINATED NOTES

The following is a summary of certain provisions of the Subordinated Notes and is qualified in its entirety by reference to the terms and provisions of the Subordinated Notes. A copy of the form of Subordinated Notes is available to prospective investors upon request to the Bank.

### General

The Company will apply the proceeds of the Company Preferred Securities and the Company Common Securities to purchase newly-issued Subordinated Notes issued by the Bank, acting through the Branch. The Company will be prohibited by the Company Agreement from selling the Subordinated Notes. The Subordinated Notes will be undated, unsecured, subordinated obligations of the Bank, acting through the Branch, ranking *pari passu* with any other unsecured subordinated obligations of the Bank with the exception of any *prêts participatifs* granted to or *titres participatifs* issued by the Bank, which rank junior to the Subordinated Notes. The Subordinated Notes will have an aggregate principal amount of €600,000,000. Interest on the Subordinated Notes will be payable from the date of initial issuance annually in arrears on 24 January of each year, commencing on 24 January 2003 and except that the last such Interest Payment Date shall be 24 January 2012, at a fixed rate per annum on the principal amount from time to time outstanding equal to 6.342% (calculated on an Actual/Actual Basis), and (ii) thereafter quarterly on 24 January, 24 April, 24 July and 24 October of each year, commencing on 24 April 2012, at a variable rate per annum on the principal amount from time to time outstanding equal to 2.33% above three-month EURIBOR (calculated on an Actual/360 Basis) determined on the Determination Date. Each date on which interest is so payable is an "Interest Payment Date" and the period from and including an Interest Payment Date, or the date of initial issuance as applicable, to but not including the next succeeding Interest Payment Date is an "Interest Period". If any Interest Payment Date falls on a day that is not a Business Day, interest relating to that Interest Payment Date will be payable on the next succeeding Business Day unless that day falls in the next calendar month, in which case such interest will be payable on the immediately preceding Business Day, without any adjustment, interest or further payment as a result thereof. Notwithstanding anything to the contrary, if no dividend is required to be paid or declared by the Company on the Company Preferred Securities on a Dividend Payment Date, then the Bank will not be obligated to make a payment of interest on the Subordinated Notes otherwise due and payable on the corresponding Interest Payment Date. Interest payments on the Subordinated Notes will be noncumulative.

### Redemption

The Subordinated Notes will be redeemable at the option of the Bank (i) on the Interest Payment Date on 24 January 2012 or any Interest Payment Date thereafter, in whole or in part, and (ii) prior to the Interest Payment Date on 24 January 2012, in whole but not in part, if (a) a Tax Event, an Investment Company Act Event or a Capital Disqualification Event occurs or (b) in the event the Branch's United States interest expense deduction attributable to the Branch's investment proceeds of the Subordinated Notes or Replacement Notes will be reduced or is not currently usable, in each case at a redemption price equal to the higher of (x) the redemption price that would otherwise apply as calculated pursuant to clause (i) above, and (y) a "Subordinated Notes Make Whole Amount" (calculated in substantially the same manner as the Make Whole Amount with respect to the Company Preferred Securities), *provided* that the Subordinated Notes Make Whole Amount shall not be payable upon a redemption of the Subordinated Notes that is not accompanied by a redemption of the Company Preferred Securities. Any redemption of the Subordinated Notes is subject to compliance with applicable regulatory requirements, including the prior approval of the *Secrétariat général de la Commission bancaire* under applicable guidelines or policies of the *Commission bancaire*.

### Replacement Notes

In the event that any of the Subordinated Notes (or any Replacement Notes) become due or are redeemed while any Company Preferred Securities remain outstanding and are not subject to a notice of redemption, the Bank may (and in the case of redemption pursuant to clause (ii) (b) of the immediately preceding paragraph, will) cause the Company to invest the proceeds of redemption of the Subordinated Notes in subordinated debt securities that are issued by any branch of the Bank, that have the same ranking in a liquidation of the Bank as the Subordinated Notes and otherwise have economic terms essentially equivalent to the Subordinated Notes, *provided*, that such replacement does not result in a Capital Disqualification Event, a Tax Event or an Investment Company Act Event.



**Substitution**

At any time, the Bank will have the right to substitute any other branch for the Branch as the obligor on all or part of the Subordinated Notes or Replacement Notes, *provided*, that such substitution does not result in a Capital Disqualification Event, a Tax Event or an Investment Company Act Event.

**Additional Amounts**

If the Bank or the Branch is required to withhold any taxes, duties or other governmental charges with respect to any payment in respect of the Subordinated Notes, the Bank will pay such additional amounts as shall be required so that the amount received by the Company thereunder shall not be reduced as a result of any such additional taxes, duties or other governmental charges.

**Subordination**

The Subordinated Notes will be undated and unsecured obligations of the Bank, acting through the Branch, ranking *pari passu* with any other unsecured subordinated obligations of the Bank with the exception of any *prêts participatifs* granted to or *titres participatifs* issued by the Bank, which will rank junior to the Subordinated Notes.

**Failure of Payment**

If the Branch fails to pay an instalment of interest when due or repay principal in a winding-up or otherwise of the Bank, the only remedies available to the Company will be to bring suit for the amount of interest and/or principal not paid when due.

**Forgiveness of Debt**

If a Bankruptcy Event or a Capital Deficiency Event occurs, then the Subordinated Notes or any successor Replacement Notes then held by the Company will be cancelled and the Bank's obligations thereunder (including, without limitation, its obligation to pay principal and interest) will be forgiven.

**Liquidation**

If the Bank is liquidated and upon commencement of the related liquidation proceedings the Subordinated Notes or any successor Replacement Notes are still outstanding, then the Subordinated Notes or any successor Replacement Notes will be distributed by the Company to the Bank, as holder of the Company Common Securities.

**Transfer of the Subordinated Notes Prohibited**

The Subordinated Notes will be represented by a single definitive note in registered form. The Subordinated Notes may not be sold or otherwise transferred by the Company without the consent of the Bank.

**Modification and Amendment of the Subordinated Notes**

The Subordinated Notes may be modified or amended only by the written agreement of the Bank and the Company.

**Governing Law**

The Subordinated Notes will be governed by, and construed in accordance with, the laws of the State of New York.

## **DESCRIPTION OF LIMITED LIABILITY COMPANY INTERESTS IN THE COMPANY**

The following summary of the terms of the limited liability company interests in the Company does not purport to be complete and is subject in all respects to the applicable provisions of the Delaware Limited Liability Company Act and the Company Agreement.

### **Company Common Securities**

#### ***General***

Upon consummation of the Offering, the Company will have outstanding Company Common Securities with an aggregate stated amount of €1,000, all of which will be held by the Bank, acting through the Branch. The Bank has agreed with the Company in the Support Agreement that, so long as any Company Preferred Securities are outstanding, it will maintain direct or indirect ownership of 100% of the outstanding Company Common Securities.

#### ***Dividends***

The Company Common Securities ordinarily rank junior to the Company Preferred Securities and Company Parity Preferred Securities, if any, as to payment of dividends. Holders of Company Common Securities will only receive dividends out of interest payments received by the Company on the Subordinated Notes and any successor Replacement Notes not required to be applied to fund dividends with respect to the Company Preferred Securities or expenses of the Company. So long as the Company Preferred Securities or any Company Parity Preferred Securities are outstanding, no dividends or other distributions (including redemptions and purchases) may be made with respect to Company Common Securities unless full dividends on the Company Preferred Securities and Company Parity Preferred Securities, if any, have been paid (except as otherwise described under "Description of the Company Preferred Securities—Ranking—Liquidation Preference"). See "The Company—Business and Strategy of the Company—Dividends".

However, to the extent that dividends are not paid on any Dividend Payment Date because a Dividend Limitation Notice has been given, the Bank will at its option shift the dividend preference to the Company Common Securities. However, the Bank may only give a Dividend Limitation Notice with respect to a Dividend Payment Date that is not a Mandatory Dividend Payment Date.

If full dividends on the Company Preferred Securities are paid on any Dividend Payment Date and, after giving effect to such payment, the Company has additional funds available for the payment of dividends, the Company, in its discretion, may apply such additional funds to pay dividends on the Company Common Securities.

#### ***Voting Rights***

Subject to the limited rights of the holders of the Company Preferred Securities and the Company Parity Preferred Securities, if any, all voting rights are vested in the Company Common Securities. The holders of Company Common Securities are entitled to vote in proportion to the stated amounts represented by their Company Common Securities.

#### ***Rights Upon Liquidation***

In the event of the dissolution, liquidation or winding up of the Company, whether voluntary or involuntary, after all debts and liabilities of the Company have been satisfied and there have been paid or set aside for the holders of the Company Preferred Securities the full preferential amounts to which such holders are entitled, the holders of Company Common Securities will be entitled to share equally and rateably in any assets remaining.

### **Company Parity Preferred Securities**

The Company will be precluded by the Company Agreement from issuing any equity interests in the Company in addition to the Company Common Securities and the Company Preferred Securities except that the Company may issue additional limited liability company interests that (i) rank on a

parity with the Company Preferred Securities as to payment of dividends and rights upon dissolution, liquidation or winding up of the Company, and (ii) benefit from undertakings by the Bank substantially identical to its undertakings in the Support Agreement for the benefit of holders of the Company Preferred Securities ("Company Parity Preferred Securities"). Accordingly, the Company may not issue any equity securities that rank senior to the Company Preferred Securities. The Company may issue Company Parity Preferred Securities, whether as a new series or as additional shares of the Company Preferred Securities, without any requirement that the approval of the holders of the Company Preferred Securities first be obtained, provided that the approval of the Independent Directors (or of the Independent Director if there is only one Independent Director) will be required for any issuance of Company Parity Preferred Securities.

Subject to certain obligations that may arise under the Delaware Limited Liability Company Act, no additional payments will be required pursuant to the Delaware Limited Liability Company Act for Company Preferred Securities to represent limited liability company interests in the Company upon issuance against full payment of the purchase price therefor. The specific terms of a particular series of Company Parity Preferred Securities will be described in the Certificate of Designation (as defined in the Company Agreement) to be incorporated into the Company Agreement relating to that series, except in the case of the Company Preferred Securities, the terms of which are being described in the Company Agreement.

Subject to limitations prescribed by Delaware law and the Company Agreement, the Board of Directors or, if then constituted, a duly authorised committee thereof, is authorised to issue Company Parity Preferred Securities in such series as the Board of Directors may determine and to establish, from time to time, the number or amount by aggregate liquidation preference of shares (if applicable) of securities to be included in any such series and to fix the designation and any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the securities of any such series, and such other subjects or matters as may be fixed by resolution adopted by a majority of the Board of Directors and a majority of the Independent Directors (or the Independent Director if there is only one Independent Director).

A Certificate of Designation relating to each series of company preferred securities will set forth the preferences and other terms of such series, including without limitation the following: (i) the title and stated value of such series, (ii) the number or amount by aggregate liquidation preference of securities of such series offered and the liquidation preference per share of such series, (iii) the dividend rate(s), period(s), and/or payment date(s) or method(s) of calculation thereof applicable to such series, (iv) whether such class or series of company preferred securities is cumulative or not and, if cumulative, the date from which dividends on such series shall accumulate, (v) the provisions for a sinking fund, if any, for such series, (vi) the provisions for redemption, if applicable, of such series, (vii) any voting rights of such series, (viii) the relative ranking and preferences of such series as to dividend rights and rights upon dissolution, liquidation or winding up of the affairs of the Company, (ix) any limitations on issuance of any series of company preferred securities ranking senior to or on a parity with such series of company preferred securities as to dividend rights and rights upon dissolution, liquidation or winding up of the affairs of the Company, (x) whether company preferred securities of such series will be eligible for issuance in book entry form, and (xi) any other specific terms, preferences, rights, limitations or restrictions of such series.

## **TAXATION**

### **United States Taxation**

#### ***Certain United States Federal Income Tax Consequences***

The following summary of the principal United States federal income tax consequences relating to an investment in the Trust Preferred Securities addresses the tax consequences to a Trust Preferred Securityholder that is not a United States Holder (a "Non-U.S. Holder"). A "Trust Preferred Securityholder" is a person that acquires Trust Preferred Securities on their original issue at their original offer price. A "United States Holder" is (a) a citizen or resident of the United States, (b) a corporation, partnership or other entity created or organized in or under the laws of the United States or any political subdivision thereof, (c) an estate the income of which is subject to United States federal income taxation regardless of its source or (d) a trust if (i) a United States court is able to exercise primary supervision over the trust's administration and (ii) one or more United States persons have the authority to control all of the trust's substantial decisions.

This summary does not address all tax consequences that may be applicable to a Non-U.S. Holder, including tax considerations that arise from rules of general application to all taxpayers or to certain classes of investors or that are generally assumed to be known by investors. This summary is based upon the Internal Revenue Code of 1986, as amended (the "Code"), Treasury Regulations, Internal Revenue Service ("IRS") rulings and pronouncements and judicial decisions as of the date hereof, all of which are subject to change (possibly with retroactive effect). Prospective investors should note that no rulings have been or are expected to be sought from the IRS with respect to the tax treatment of the Trust Preferred Securities and no assurance can be given that the IRS will not take contrary positions. Moreover, no assurance can be given that the tax consequences described herein will not be challenged by the IRS or, if challenged, that such a challenge will not be successful.

In purchasing the Trust Preferred Securities, each Trust Preferred Securityholder agrees with the Bank, the Company and the Trustee that the Bank, the Company, the Trustee and the Trust Preferred Securityholders will treat Trust Preferred Securityholders for all purposes as holders of an undivided interest in Trust assets, including the Company Preferred Securities, and will not treat the Trust Preferred Securityholders or the holders of the Company Preferred Securities as holders of an underlying interest in the Bank or in the Subsidiary or in any other person, and the following discussion is based on the assumption that such treatment will apply for United States federal income tax purposes.

#### ***United States Federal Income Tax Treatment of the Trust***

The Bank intends to treat the Trust as a grantor trust for United States federal income tax purposes. Assuming full compliance with the terms of the Trust Agreement, the Trust will not be an association taxable as a corporation. Accordingly, for United States federal income tax purposes, each holder of Trust Preferred Securities will be considered the owner of an undivided interest in the Trust assets, including the Company Preferred Securities held by the Trust.

#### ***United States Federal Income Tax Treatment of the Company***

Assuming full compliance with the Company Agreement, the Company will not be taxable as a corporation and will not itself be subject to United States federal income tax. The Bank intends to treat the Company as a partnership for United States federal income tax purposes.

#### ***Income and Withholding Tax***

The Company intends to operate so that it will not be treated as engaged in the conduct of a United States trade or business. Moreover, the Subordinated Notes (and Replacement Notes) will be exempt from withholding of United States federal income tax when income attributable to such securities is distributed or allocated to beneficial holders of Company Preferred Securities. Accordingly, a Non-U.S. Holder will not be subject to withholding of United States federal income tax on payments in respect of the Trust Preferred Securities, nor will a Non-U.S. Holder be subject to United States federal income tax on its allocable share of the Company's income unless such income is effectively connected with the conduct by the Non-U.S. Holder of a trade or business in the United States.

A Non-U.S. Holder will not be subject to U.S. federal income or withholding tax on gain realized on the sale or exchange of the Trust Preferred Securities, unless (i) such gain is effectively connected with the conduct by the Non-U.S. Holder of a trade or business in the United States or (ii) the Non-U.S. Holder is an individual who was present in the U.S. for 183 days or more in the taxable year of the sale and certain other conditions are met as well.

### ***Information Reporting and Backup Withholding***

In general, a Non-U.S. Holder who holds the Trust Preferred Securities through a non-U.S. bank or other non-U.S. financial institution that is a participant in Clearstream, Luxembourg or Euroclear will not be required to provide certification of non-U.S. status for withholding purposes. In other contexts, however, Non-U.S. Holders may be required to comply with applicable certification procedures to establish that they are not U.S. Holders in order to avoid the application of information reporting requirements and backup withholding tax. Non-U.S. Holders who withdraw from the Trust and directly hold Company Preferred Securities may also be required to comply with such certification procedures. U.S. information reporting requirements (but not backup withholding) will apply to payments of dividends on Trust Preferred Securities or Company Preferred Securities that an investor holds through a broker, custodian, nominee or other agent (a) that is a U.S. Person; (b) that derives 50% or more of its gross income for a specified three-year period from the conduct of a trade or business in the United States; (c) that is a "controlled foreign corporation" as to the United States; or (d) that is a foreign partnership, but only (i) if at any time during its tax year, one or more of the partners are U.S. Persons who in the aggregate hold more than 50% of the income or capital interest in such foreign partnership; or (ii) if at any time during its tax year, such foreign partnership is engaged in a U.S. trade or business; or (iii) if the payment is made outside the United States and such foreign partnership does not have documentary evidence in its files that the holder or beneficial owner is a non-U.S. Person or the holder or beneficial owner otherwise establishes an exemption.

Prior to 31st March each year, the Company will furnish each beneficial owner of Company Preferred Securities that are not represented by Trust Preferred Securities (or, if such Company Preferred Securities are held by a nominee or custodian that does not comply with the requirements described in the next paragraph, such nominee or custodian) with a copy of the relevant Schedule K-1 to the Company's annual tax return on IRS Form 1065, setting forth such beneficial owner's allocable share of the Company's income for the prior calendar years. Copies of each Schedule K-1 will be provided to the IRS. The Company will not furnish beneficial owners of Trust Preferred Securities with Schedules K-1.

Any person who holds Company Preferred Securities as a nominee for another person is required to disclose to the Company the name, address, and taxpayer identification number of the nominee and each person for whom it holds Company Preferred Securities; as well as certain other information regarding the Company Preferred Securities it holds and the Persons for whom it holds such securities. Brokers and financial institutions that hold Company Preferred Securities may be required to furnish additional information about themselves and any Company Preferred Securities they may hold for their own accounts. Penalties may be imposed for failure to comply with these requirements. These requirements do not apply to nominee holders of Trust Preferred Securities.

### **Dutch Taxation**

*The following is a summary of certain Dutch tax consequences relating to the purchase, ownership, and disposition of the Trust Preferred Securities or Company Preferred Securities. This summary does not address any laws other than the tax laws of the Netherlands as currently in effect and in force and as interpreted in published case law by the courts of the Netherlands at the date hereof, and is subject to change after such date, including changes that could have retroactive effect. This summary does not purport to be complete and, in light of the limited nature of this summary, each holder or prospective holder should avoid placing undue reliance on this summary. Each holder or prospective holder of Trust Preferred Securities or Company Preferred Securities should consult his or her professional tax advisor with respect to the Dutch tax consequences of an investment in Trust Preferred Securities or Company Preferred Securities.*

For the purposes of the principal Dutch tax consequences described below, it is assumed that no individual holder of the Trust Preferred Securities or Company Preferred Securities has a substantial interest in the Company. An individual has a substantial interest in the Company if either he, alone or together with a partner (*partner*) as defined in the Income Tax Act 2001 (*Wet inkomstenbelasting 2001*) or a person who is a "connected person" as defined in the Income Tax Act 2001 (*Wet inkomstenbelasting 2001*) in relation to such individual, has, directly or indirectly, the ownership of, or certain rights over, the Trust Preferred Securities or Company Preferred Securities representing 5% or more of the total issued and outstanding Trust Preferred Securities or Company Preferred Securities, or rights to acquire, directly or indirectly, Trust Preferred Securities or Company Preferred Securities, whether or not already issued, that represent 5% or more of the total issued and outstanding Trust Preferred Securities or Company Preferred Securities.

### ***Dutch Taxes on Income and Capital Gains***

#### ***Residents of the Netherlands***

##### ***Dutch resident entities***

Generally, a holder of Trust Preferred Securities or Company Preferred Securities will be subject to Dutch corporate income tax with respect to distributions or capital gains realised on the disposal or deemed disposal of Trust Preferred Securities or Company Preferred Securities, if the holder is a resident of, or deemed to be resident of, the Netherlands.

Unless tax exempt, Dutch resident entities are generally subject to corporate income tax, levied at a rate of 29% of the first €22,689 of the taxable profits and 34.5% of the excess over this amount.

##### ***Dutch resident individuals***

A holder of Trust Preferred Securities or Company Preferred Securities who is a resident of the Netherlands, deemed to be a resident of the Netherlands, or who has elected to be treated as a resident of the Netherlands for Dutch tax purposes is subject to income tax in respect of income or capital gains derived from the Trust Preferred Securities or Company Preferred Securities at the progressive rates provided in the Income Tax Act 2001 if:

- (i) the holder of the Trust Preferred Securities or Company Preferred Securities has an enterprise or an interest in an enterprise to which the Trust Preferred Securities or Company Preferred Securities are attributable; or
- (ii) the income or gain qualifies as income from miscellaneous activities (*belastbaar resultaat uit overige werkzaamheden*) in the Netherlands as defined in the Income Tax Act 2001 (*Wet inkomstenbelasting 2001*).

If conditions (i) and (ii) provided above do not apply to the individual holder of the Trust Preferred Securities or Company Preferred Securities, the holder of the Trust Preferred Securities or Company Preferred Securities will be subject to Dutch income tax on a deemed return regardless of actual income derived from the Trust Preferred Securities or Company Preferred Securities or gain or loss realised upon disposal or deemed disposal of the Trust Preferred Securities or Company Preferred Securities.

The deemed return equals 4% of the average value of the holder's net assets in the relevant fiscal year (including the Trust Preferred Securities or Company Preferred Securities). The average value of the holder's net assets in a fiscal year is equal to the sum of the value of the net assets at the beginning of the fiscal year and at the end of the fiscal year divided by two. Taxation only occurs to the extent the average value of the holder's net assets exceeds the "exempt net asset amount" (*heffingsvrij vermogen*) which is, for the year 2002, €18,146. The deemed return is reduced by the portion of the personal allowances on annual income the holder is entitled to. As so reduced, the deemed return shall be taxed at a rate of 30%.

### ***Dutch gift, estate and inheritance tax***

Dutch gift, estate or inheritance taxes will be due in the Netherlands in respect of the transfer of the Trust Preferred Securities or Company Preferred Securities by way of gift by, or on the death of,

a holder of the Trust Preferred Securities or Company Preferred Securities if the holder is, or is deemed to be, a resident of the Netherlands, for the purpose of the relevant provisions, at the time of the gift or his or her death.

### ***Other Taxes***

There is no Dutch registration tax, capital tax, customs duty, transfer tax, stamp duty, or any other similar tax or duty, other than court fees, payable in the Netherlands in respect of or in connection with the execution, delivery and enforcement by legal proceedings (including any foreign judgement in the courts of the Netherlands) of any agreement relating to the Trust Preferred Securities or Company Preferred Securities or the performance of the Company's obligations under the Trust Preferred Securities or Company Preferred Securities.

No Dutch value added tax will arise in respect of any payment in consideration for the issue of the Trust Preferred Securities or Company Preferred Securities.

### **Proposed European Directive on Taxation of Savings Income**

The European Union is currently considering proposals for a new directive regarding the taxation of savings income. Subject to a number of important conditions being met, it is proposed that member states will be required to provide to the tax authorities of another member state details of payments of interest or other similar income paid by a person within its jurisdiction to an individual resident in that other member state, subject to the right of certain member states to opt instead for a withholding system for a transitional period in relation to such payments.

## PLAN OF DISTRIBUTION

The Trust has, subject to the terms and conditions set forth in the purchase agreement, dated as of 17 January 2002, agreed to sell to each of the Initial Purchasers named below, and each of the Initial Purchasers has agreed to purchase the principal amount of the Trust Preferred Securities set forth opposite its name below.

<u>Initial Purchasers</u>	<u>Aggregate Liquidation Preference of Trust Preferred Securities</u>	<u>Aggregate Number of Trust Preferred Securities</u>
BNP PARIBAS, London Branch .....	480,000,000	480,000
Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. ....	45,000,000	45,000
Merrill Lynch International .....	45,000,000	45,000
Deutsche Bank AG London .....	15,000,000	15,000
Salomon Brothers International Limited .....	15,000,000	15,000
Total .....	<u>€600,000,000</u>	<u>600,000</u>

Because the Trust will invest the proceeds from the sale of the Trust Preferred Securities in the Company Preferred Securities issued by the Company, the purchase agreement provides that BNP Paribas will pay a commission of €10 per Trust Preferred Security (or €6,000,000 for all Trust Preferred Securities). After the Trust Preferred Securities are released for sale, the Initial Purchasers may vary the offering price and other selling terms from time to time.

The Trust Preferred Securities have not been and will not be registered under the Securities Act and may not be offered, sold or delivered within the United States or to, or for the account or benefit of, U.S. persons except in certain transactions exempt from the registration requirements of the Securities Act. Securities in bearer form are also subject to U.S. tax law requirements and may not be offered, sold or delivered within the United States or its possessions or to a U.S. person, except in certain transactions permitted by U.S. tax regulations.

Each Initial Purchaser has agreed that, except as permitted by the Purchase Agreement, it will not offer, sell or deliver the Trust Preferred Securities, (i) as part of their distribution at any time or (ii) otherwise until 40 days after the later of the commencement of the offering and the Closing Date (the "distribution compliance period"), within the United States or to, or for the account or benefit of, U.S. persons, and it will have sent to each dealer to which it sells any Trust Preferred Securities during the distribution compliance period a confirmation or other notice setting forth the restrictions on offers and sales of the Trust Preferred Securities within the United States or to, or for the account or benefit of, U.S. persons. In addition, until 40 days following the commencement of the offering, an offer or sale of Trust Preferred Securities within the United States by a securities dealer, whether or not it is participating in the offering, may violate the registration requirements of the Securities Act if such offer or sale is made otherwise than pursuant to another exemption from registration under the Securities Act. Terms used in this paragraph and the preceding paragraph have the meanings given to them by Regulation S under the Securities Act and U.S. federal tax law.

Application has been made to list the Trust Preferred Securities on the Official Segment of the Stock Market of Euronext Amsterdam N.V.

In connection with the issue of the Trust Preferred Securities, BNP Paribas, London branch, or any person acting for it may over-allot or effect transactions with a view to supporting the market price of the Trust Preferred Securities at a level higher than that which might otherwise prevail for a limited period after the issue date. However, there may be no obligation on BNP Paribas, London branch, or any agent or any agent of its to do this. Such stabilising, if commenced, may be discontinued at any time, and must be brought to an end after a limited period.

Each Initial Purchaser has represented, warranted and agreed that (i) it has not offered or sold and, prior to the expiry of a period of six months from the Issue Date, will not offer or sell any Trust Preferred Securities to persons in the United Kingdom except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or otherwise in circumstances that have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of



Securities Regulations 1995; (ii) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of section 21 of the Financial Services and Markets Act 2000 ("FSMA")) received by it in connection with the issue or sale of any Trust Preferred Securities in circumstances in which section 21(1) of the FSMA does not apply to the Trust and; (iii) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Trust Preferred Securities in, from or otherwise involving the United Kingdom.

This Offering Circular does not constitute a document that has been approved by, or registered or filed with the *Commission des opérations de bourse*. The Trust Preferred Securities may not be offered or sold to the public in France and neither this Offering Circular, nor any other offering material or information contained therein relating to the Trust Preferred Securities, may be released, issued or distributed or caused to be released, issued or distributed to the public in France, or used in connection with any offer for subscription or sale of Trust Preferred Securities to the public in France. Such offers, sales and distributions may be made in France only to, for their own account, qualified investors (*investisseurs qualifiés*), as defined in articles L. 411-1 and L.411-2 of the *Code Monétaire et Financier* and *décret* n° 98-880 dated 1 October 1998. Persons into whose possession this material comes must inform themselves about and observe any such restrictions. This material does not constitute, and may not be used for or in connection with, an offer to anyone to whom it is unlawful to make such offer or a solicitation by anyone not authorised so to act.

So long as the Trust Preferred Securities have not been listed on the Official Segment of the Stock Market of Euronext Amsterdam N.V., or it is unlikely that the Trust Preferred Securities will soon be admitted to listing, the Trust Preferred Securities may only be offered, sold, or delivered in or from the Netherlands, as part of their initial distribution or as part of any re-offering, and this Offering Circular or any other document in respect of the offering may only be distributed or circulated in the Netherlands, to Professional Investors.

Furthermore, the Initial Purchasers have undertaken and agreed with the Trust that until the listing date it will be made clear both upon making an offer of Trust Preferred Securities in the Netherlands and from any documents or advertisements in which a forthcoming offering of Trust Preferred Securities is publicly announced in the Netherlands that such offer is exclusively made to Professional Investors.

## NOTICE TO INVESTORS

*Because of the following restrictions, purchasers are advised to consult legal counsel prior to making any offer, resale, pledge or transfer of Trust Preferred Securities.*

This Offering Circular has been prepared by the Trust, the Company, the Bank and the BNP Paribas Group for use by the Initial Purchasers in making offers and sales of the Trust Preferred Securities outside the United States to non-U.S. Persons in reliance on Regulation S under the Securities Act.

Each purchaser of Trust Preferred Securities offered hereby will be deemed to have represented and agreed that such purchaser understands that the Trust Preferred Securities have not been and will not be registered under the Securities Act and may not be offered, sold or delivered within the United States or to, or for the account or benefit of, U.S. persons, except in accordance with Regulation S under the Securities Act or pursuant to an exemption from the registration requirements of the Securities Act. Each purchaser also will be deemed to have represented and agreed that such purchaser understands that notes in bearer form are subject to U.S. tax law requirements and may not be offered, sold, or delivered within the United States or its possessions or to a U.S. person, except in certain transactions permitted by U.S. tax regulations.

Any United States Holder who holds a Trust Preferred Security will be subject to limitations under the United States income tax laws, including the limitations provided in Sections 165(j) and 1287(a) of the Internal Revenue Code. These sections provide that, with certain exceptions, a United States taxpayer will not be permitted to deduct any loss, and will not be eligible for capital gain treatment with respect to any gain realised on a sale, exchange or redemption of a definitive Trust Preferred Security.

**The Global Certificate representing the Trust Preferred Securities will bear a legend to the above effect, unless the Bank determines otherwise in compliance with applicable law.**

## **LEGAL MATTERS**

Certain matters of the law of France, New York and the United States of America will be passed upon for the Trust, the Company, the Bank and the Initial Purchasers by Cleary, Gottlieb, Steen & Hamilton, Paris, France. Certain matters of Delaware law relating to the validity of the Trust Preferred Securities and the Company Preferred Securities will be passed upon for the Trust, the Company and the Bank by Richards, Layton & Finger, P.A., Wilmington, Delaware.