

**THIS NOTICE IS IMPORTANT AND REQUIRES THE IMMEDIATE ATTENTION  
OF  
SECURITYHOLDERS.**

**If Securityholders are in any doubt about any aspect of the proposals in this notice and/or the action they should take, they are recommended to seek their own financial advice immediately from their broker, bank manager, solicitor, accountant or other another appropriately authorised independent financial adviser and such other professional advisers as they deem necessary.**

**FURTHER INFORMATION REGARDING THE MATTERS REFERRED TO IN  
THIS NOTICE IS AVAILABLE IN THE CONSENT SOLICITATION  
MEMORANDUM (AS DEFINED BELOW), AND ELIGIBLE SECURITYHOLDERS  
(AS DEFINED BELOW) ARE ENCOURAGED TO READ THIS NOTICE IN  
CONJUNCTION WITH THE SAME.**

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**NIBC BANK N.V.**  
*(formerly known as NIB Capital Bank N.V.,  
incorporated with limited liability under the laws of The Netherlands  
and having its corporate seat in The Hague)*  
(the "**Issuer**")

**NOTICE OF AN ADJOURNED SECURITYHOLDER MEETING**

to the holders of the

U.S.\$100,000,000 CMS Linked Perpetual Debt Securities (ISIN: XS0215294512)  
(the "**Securities**")

of the Issuer presently outstanding.

**NOTICE IS HEREBY GIVEN** that, following the adjournment of the meeting of Securityholders convened on 5 February 2024 which was adjourned for want of quorum, an adjourned meeting (the "**Meeting**") of the holders of the Securities convened by the Issuer will be held at the offices of Clifford Chance LLP at Droogbak 1A, 1013 GE Amsterdam, The Netherlands on 21 February 2024 for the purpose of considering and, if thought fit, passing the resolution set out below, with the implementation of that resolution being subject to satisfaction of the condition set out in paragraph 5(b) thereof (the "**Eligibility Condition**") and which resolution will be proposed as an extraordinary resolution of the Securityholders (the "**Extraordinary Resolution**") in accordance with the provisions of the Trust Deed dated 24 March 2005 (, the "**Trust Deed**"), made between the Issuer and The Law Debenture Trust Corporation p.l.c. (the "**Trustee**").

The Meeting will commence at 9:00 a.m. (London time) / 10:00 a.m. (CET).

For the avoidance of doubt, Securityholders who have already submitted Consent Instructions or Ineligible Holder Instructions prior to the date of this Notice have the option to leave such

instructions unchanged or revoke such instructions. In the event that a Securityholder elects to revoke a previously submitted Consent Instruction or Ineligible Holder Instruction, nothing shall prevent the relevant Securityholder from submitting a further Consent Instruction or Ineligible Holder Instruction prior to the extended expiration deadline occurring as at 4:00 p.m. (London time) / 5:00 p.m. (CET) on 16 February 2024 - see "*Voting and Quorum*" below.

In accordance with normal practice, the Trustee, the Principal Paying Agent and Kroll Issuer Services Limited (the "**Tabulation Agent**") have not been involved in the formulation of the Securityholder Proposal (as defined below). The Trustee, the Tabulation Agent and NatWest Markets N.V. (the "**Sole Solicitation Agent**") express no opinion on, and make no representations as to the merits of, the Securityholder Proposal, the Extraordinary Resolution or the proposed amendments referred to in the Extraordinary Resolution set out below.

None of the Tabulation Agent, the Sole Solicitation Agent and the Trustee makes any representation that all relevant information has been disclosed to Securityholders in or pursuant to this Notice, the Consent Solicitation Memorandum or otherwise. None of the Tabulation Agent, the Sole Solicitation Agent and the Trustee has approved the draft Supplemental Trust Deed referred to in the Extraordinary Resolution set out below and Securityholders are recommended to arrange to inspect and review such draft Supplemental Trust Deed as provided below in this Notice. Accordingly, Securityholders should take their own independent legal, financial, tax or other advice on the merits and the consequences of voting in favour of the Extraordinary Resolution, including any tax consequences, and on the impact of the implementation of the Extraordinary Resolution.

None of the Tabulation Agent, the Sole Solicitation Agent and the Trustee are responsible for the accuracy, completeness, validity or correctness of the statements made in the Consent Solicitation Memorandum or this Notice, or omissions therefrom.

Neither this Notice nor the Consent Solicitation Memorandum constitutes or forms part of, or should be construed as, an offer for sale, exchange or subscription of, or a solicitation of any offer to buy, exchange or subscribe for, any securities of the Issuer or any other entity. The distribution of the Consent Solicitation Memorandum may nonetheless be restricted by law in certain jurisdictions. Persons into whose possession the Consent Solicitation Memorandum comes are required to inform themselves about, and to observe, any such restrictions.

## **BACKGROUND**

### *Status of LIBOR*

In July 2017, the UK Financial Conduct Authority (the "**FCA**") announced that it would no longer persuade or compel banks to submit rates for the calculation of the LIBOR benchmark after the end of 2021 and explained they expected that some panel banks would cease contributing to LIBOR panels at such time.

On 5 March 2021, the administrator of LIBOR, ICE Benchmark Administration Limited ("**IBA**") announced its intention to cease the publication of all 35 LIBOR settings, the majority on 31 December 2021, and for certain USD LIBOR settings, on 30 June 2023, subject to the rights of the FCA to compel continued publication. The IBA notified the FCA of its intention and, on the same date, the FCA published an announcement stating that all 35 LIBOR settings would either cease to be provided by any administrator or no longer be representative of the underlying market and economic reality (and that representativeness would not be restored)

immediately after: (i) 31 December 2021, in the case of all sterling, euro, Japanese Yen and Swiss Franc, and certain U.S. Dollar settings; or (ii) 30 June 2023, in the case of the remaining U.S. Dollar settings.

The Alternative Reference Rates Committee ("**ARRC**") was convened by the Federal Reserve Board and the Federal Reserve Bank of New York to help ensure a successful transition from U.S. Dollar LIBOR to a more robust reference rate and to this end the ARRC has published a number of reports and guiding principles concerning its recommendations for spread-adjusted fallbacks for contracts referencing U.S. Dollar LIBOR. Following extensive consultations and discussion of potential candidates, the ARRC identified SOFR as the rate that represents best practice for use in certain new U.S. dollar derivatives and other financial contracts. The Federal Reserve began to publish SOFR in April 2018.

U.S. Dollar swap rates based on USD LIBOR swap transactions are determined by reference to the USD LIBOR ICE Swap Rate (available in various tenors) calculated and administrated by the IBA (for swaps referencing 3-month USD LIBOR) ("**USD LIBOR ICE Swap Rate**").

In March 2021, the ARRC proposed a suggested fallback formula for the USD LIBOR ICE Swap Rate which instead references the USD SOFR ICE Swap Rate (launched on 8 November 2021), adds The International Swaps and Derivatives Association, Inc. ("**ISDA**") fallback spread adjustment for 3-month USD LIBOR (26.161 bps) and applies technical adjustments to account for differences in payment frequency and day count conventions between the USD LIBOR and USD SOFR swaps (the "**ARRC Recommended Methodology**").

In June 2021, ISDA launched a consultation to seek feedback on the incorporation in the ISDA definitions of a fallback formula for, amongst other things, the USD LIBOR ICE Swap Rate (using the ARRC Recommended Methodology). In July 2021, ISDA announced the results of this consultation, which indicated that a significant majority of respondents agreed with such fallback formula and that the conditions were satisfied for them to be incorporated in the ISDA definitions. As a result of this, on 10 November 2021, ISDA published Supplement 88 to the 2006 ISDA Definitions which updated provisions in the 2006 ISDA Definitions that referred or related to the USD LIBOR ICE Swap Rate to refer to a fallback rate calculated on the basis of ARRC Recommended Methodology.

On 8 November 2021, the IBA launched the USD SOFR ICE Swap Rate® for use in financial contracts and instruments. On 30 August 2022, the IBA announced its intention to cease the publication of all USD LIBOR ICE Swap Rate® benchmark settings for all tenors immediately after the cessation of publication of USD LIBOR on 30 June 2023 subject to a consultation with market participants. Subsequently, on 14 November 2022, the IBA published a feedback statement from this consultation in which it stated that it would cease the publication of all USD LIBOR ICE Swap Rate® benchmark settings for all tenors immediately after publication on 30 June 2023.

### ***Proposed Amendments***

On the basis that the Conditions of the Securities currently envisage that, for the period from (and including) the Interest Payment Date falling in March 2024 (expected to be 24 March 2024), the Rate of Interest will, in part, be determined by reference to the applicable 10-year USD LIBOR ICE Swap Rate (which is determined on the basis of USD LIBOR swap rates) and such period commences after the discontinuation of such USD LIBOR ICE Swap Rate on 30 June 2023 (as described in "*Status of LIBOR*" above), the Issuer has convened the Meeting

for the purposes of enabling Securityholders to consider, and if they think fit, approve the Proposed Amendments, being:

- (a) an amendment to the Conditions in respect of the Rate of Interest applicable to the Securities from (and including) the Interest Payment Date falling in March 2024 (expected to be 24 March 2024) such that the Rate of Interest shall cease to be determined by reference to a USD LIBOR swap rate, and the relevant Rate of Interest shall instead be the lower of:

- (i) the sum of:

- (a) the USD SOFR Spread Adjusted Swap Rate calculated in accordance with the ARRC Recommended Methodology on the basis of the following formula (the "**ARRC Recommended Formula**") on the relevant Interest Determination Date:

$$SOFR\ SA\ SR = \frac{365.25}{360} \left[ 2 \times (\sqrt{1 + SOFR\ SR} - 1) + \left( ISDA\ Spread\ (3m\ LIBOR) \times \frac{1}{2} \times (\sqrt[4]{1 + SOFR\ SR} + 1) \right) \right]$$

where:

"**SOFR SA SR**" is the USD SOFR Spread Adjusted Swap Rate (expressed as a percentage) with a maturity of 10-years commencing on the first day of the relevant Interest Period (the "**Designated Maturity**");

"**SOFR SR**" is the USD SOFR ICE Swap Rate (expressed as a percentage) in respect of the day falling two U.S. Government Securities Business Days prior to the first day of the relevant Interest Period (the "**Interest Determination Date**") with a maturity of the Designed Maturity; and

"**ISDA Spread (3m LIBOR)**" is 0.26161 per cent.; and

- (b) the Margin (which shall remain unaltered by these amendments); and
- (ii) 8.25 per cent.;
- (b) the inclusion of new fallback provisions relating to the USD SOFR ICE Swap Rate (or any component thereof) for the purposes of calculating the USD SOFR Spread Adjusted Swap Rate (including fallback provisions in case a Benchmark Transition Event occurs with respect to the USD SOFR ICE Swap Rate (or any component thereof)) in the Conditions of the Securities and consequential amendments to Clause 19.2 (*Modification*) of the Trust Deed in respect of any future modifications to the Conditions to give effect to any Benchmark Replacement Conforming Changes; and
- (c) the inclusion of a Contractual Recognition of Bail-in Clause in the Conditions,

as more fully described in this Consent Solicitation Memorandum and the Notice (the "**Proposed Amendments**")

The Proposed Amendments will be implemented as soon as reasonably practicable following the conclusion of the Meeting at which the Extraordinary Resolution is passed (and the Eligibility Condition satisfied). Provided the Extraordinary Resolution is passed (and the Eligibility Condition satisfied) at the Meeting, implementation of the Proposed Amendments is expected to occur on 28 February 2024 (the "**Implementation Date**").

### ***Rationale for the proposed amendments to the Rate of Interest***

As noted above: (i) the USD SOFR Spread Adjusted Swap Rate is calculated in accordance with the ARRC Recommended Methodology and on the basis of the ARRC Recommended Formula included therein; and (ii) ISDA's consultation in June 2021 (which sought feedback from market participants on the use of the ARRC Recommended Methodology as a fallback for the USD LIBOR ICE Swap Rate) concluded that a majority of respondents agreed with the use of the ARRC Recommended Methodology. As such, the Proposed Amendments seek to align with the industry approved methodologies recommended by the ARRC and ISDA as fallbacks to the USD LIBOR ICE Swap Rate.

If the Extraordinary Resolution is not passed, the ultimate contractual fallback under the terms of the Securities is that the Rate of Interest will be the same as the rate determined in relation to the preceding Interest Determination Date.

### ***Rationale for addition of contractual recognition of bail-in clause***

The directive providing for the establishment of an EU-wide framework for the recovery and resolution of credit institutions and investment firms (Directive 2014/59/EU) (known as the "**Bank Recovery and Resolution Directive**" or "**BRRD**") entered into force on 2 July 2014 and was subsequently implemented in The Netherlands through the BRRD Implementation Act (*Implementatiewet Europees kader voor herstel en afwikkeling van banken en beleggingsondernemingen*) which amended the Dutch Financial Supervision Act (*Wet op het financieel toezicht*) with effect from 26 November 2015.

Article 55(1) of the BRRD requires institutions to include "*a contractual term by which the creditor or party to the agreement or instrument creating the liability recognises that the liability may be subject to the write-down and conversion powers and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of those powers by a resolution authority*" (a "**Contractual Recognition of Bail-in Clause**") where, *inter alia*, such liability is governed by the law of a third country and is "*issued or entered into*" after the date on which the transposition of the BRRD into national law became applicable.

Pursuant to Article 43(2)(b) of Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016, as amended (the "**Delegated Regulation**"), Article 55(1) of the BRRD is applicable to liabilities created before such date of transposition of the BRRD into national law where they are subject to "*material amendment*" which is defined in Article 42(1) of the Delegated Regulation as being "*an amendment, including an automatic amendment, made after that date and affecting the substantive rights and obligations of a party to a relevant agreement*".

Following the UK's withdrawal from the European Union and the end of the transitional period, English law has now become a third country law. As a result, the Issuer would be required to

include a Contractual Recognition of Bail-in Clause at the same time as the other Proposed Amendments.

Securityholders should note that Article 55(2) of the BRRD specifies that, in any event, the failure to include a Contractual Recognition of Bail-in Clause "*shall not prevent the resolution authority from exercising the write down and conversion powers in relation to that liability*".

As of the date hereof, applicable authorities have communicated that the preferred resolution strategy for the Issuer is normal insolvency, which means that, should it fail, the plan is that the Issuer would be liquidated under normal insolvency law and so resolution would not be triggered (and the bail-in tool not used). There is no guarantee, however, that such plan will be followed in a liquidation or resolution scenario, and on 18 April 2023 the European Commission adopted a proposal to promote the use of resolution tools for small and medium sized banks.

On this basis, and as a consequence of the amendments proposed to the Conditions in respect of the determination of the Rate of Interest (as set out herein) and the Securities being governed by English law, the Issuer is required to include a Contractual Recognition of Bail-in Clause in the Conditions pursuant to Article 55(2) of the BRRD and in accordance with customary market practice following the UK's withdrawal from the European Union and the end of the transitional period.

### ***Risk Factors***

#### **Blocking of Securities held through Euroclear and/or Clearstream, Luxembourg**

Following the submission of a Consent Instruction through Euroclear and/or Clearstream, Luxembourg, the Securities which are the subject of such Consent Instruction will be blocked from trading by the relevant Clearing System until the earliest of the date on which the Extraordinary Resolution is duly passed, the conclusion of the Meeting and the date upon which the Securityholder becomes entitled to withdraw, and does withdraw, its Consent Instruction in the circumstances set out under "*Section 4 – Procedures in Connection with the Consent Solicitation – Withdrawal Rights*" of the Consent Solicitation Memorandum. Following the expiry of the Expiration Deadline, a Securityholder will only be able to withdraw its Consent Instruction in the limited circumstances set out under "*Section 5 – Amendment and Termination*" of the Consent Solicitation Memorandum.

#### **Responsibility for complying with the procedures relating to the Consent Solicitation and the Meeting**

Securityholders are solely responsible for complying with all of the procedures for submitting Consent Instructions or otherwise making arrangements to vote or be represented at the Meeting. None of the Issuer, the Sole Solicitation Agent, the Trustee and the Tabulation Agent assumes any responsibility for informing Securityholders of irregularities with respect to Consent Instructions or any voting instructions.

#### **Responsibility to Consult Advisers**

Securityholders should consult their own tax, accounting, financial and legal advisers regarding the consequences (tax, accounting or otherwise) of participating in the Consent Solicitation.

None of the Issuer, the Sole Solicitation Agent, the Tabulation Agent, the Trustee or the Principal Paying Agent nor any director, officer, employee, agent or affiliate of any such person, is acting for any Securityholder, or will be responsible to any Securityholder for providing any protections which would be afforded to its clients or for providing advice in relation to the Consent Solicitation, and accordingly none of the Issuer, the Sole Solicitation Agent, the Tabulation Agent, the Trustee or the Principal Paying Agent, nor any director, officer, employee, agent or affiliate of, any such person makes any recommendation whether Securityholders should participate in the Consent Solicitation.

### **Submission of instructions by Sanctions Restricted Persons**

A Securityholder or a beneficial owner of the Securities who is, or who is believed by the Issuer to be, a Sanctions Restricted Person (as defined herein) may not participate in the Consent Solicitation. No steps taken by a Sanctions Restricted Person to vote in respect of the Proposed Amendments or deliver instructions pursuant to the Consent Solicitation will be accepted by the Issuer and such Sanctions Restricted Person will not be eligible to receive the Consent Fee or the Ineligible Holder Instruction Fee.

### **USD SOFR differs from USD LIBOR in a number of material respects and the market continues to develop in relation to USD SOFR as a reference rate for securities which incorporate a floating rate interest basis**

If the Extraordinary Resolution is passed and implemented, the applicable USD LIBOR linked swap rate for the Securities for the period commencing from (and including) the Interest Payment Date in March 2024 (expected to be 24 March 2024) will be replaced by a reference to the USD SOFR Spread Adjusted Swap Rate.

USD SOFR differs from USD LIBOR in a number of material respects, including (without limitation) that USD SOFR is a backwards-looking, compounded, risk-free overnight rate, whereas USD LIBOR is expressed on the basis of a forward-looking term and includes a risk-element based on inter-bank lending. As such, investors should be aware that USD LIBOR and USD SOFR may behave materially differently as reference rates.

The use of USD SOFR as a reference rate for eurobonds is relatively recent, and is subject to change and development, both in terms of the substance of the calculation and in the development and adoption of market infrastructure for the issuance and trading of bonds referencing (either directly or indirectly) USD SOFR. Accordingly, Securityholders should be aware that the market continues to develop in relation to USD SOFR as a reference rate in the capital markets and its adoption as an alternative to USD LIBOR. The market or a significant part thereof may adopt an application of USD SOFR that differs significantly from the current methodology used in the determination of the USD SOFR Spread Adjusted Swap Rate. In addition, as SOFR is published by the Federal Reserve Bank of New York, the Issuer has no control over its determination, calculation or publication. USD SOFR may be discontinued or fundamentally altered in a manner that is materially adverse to the interests of Securityholders.

Investors should consider these matters when considering the Consent Solicitation and the Proposed Amendments.

## **Regulatory reforms and changes may cause a benchmark to perform differently than it has done in the past or to be discontinued**

Benchmarks have, in recent years, been the subject of political and regulatory scrutiny as to how they are created and operated. This has resulted in regulatory reform and changes to existing benchmarks, with further changes anticipated. These reforms and changes may cause a benchmark like the USD SOFR ICE Swap Rate (which references USD SOFR) to perform differently than it has done in the past or to be discontinued. Any change in the performance of the USD SOFR ICE Swap Rate (or any component thereof, including USD SOFR) or its discontinuation, could have a material adverse effect on the Securities, including possible adverse tax consequences for Securityholders.

Any of the reforms, or the general increase in regulatory scrutiny of benchmarks, could increase the costs and risks of administering or participating in the setting of a benchmark and complying with any such regulations or requirements. Such factors may have the effect of discouraging market participants from continuing to administer or contribute to certain benchmarks (or rates referencing such benchmarks), trigger changes in the rules or methodologies used in certain benchmarks (or rates referencing such benchmarks) or lead to the discontinuation or unavailability of quotes of certain benchmarks.

Any changes to the administration of, or the methodology used to obtain, a benchmark or the emergence of alternatives to a benchmark as a result of these reforms, may cause the relevant benchmark to perform differently than in the past or to be discontinued, or there could be other consequences which cannot be predicted. The potential discontinuation of a benchmark or changes to its administration could require changes to the way in which the USD SOFR Spread Adjusted Swap Rate is calculated. The development of alternatives to a benchmark may result in the Securities performing differently than would otherwise have been the case if such alternatives to such benchmark had not developed. Any such consequence could have a material adverse effect on the value of, and return on, the Securities.

Furthermore, even prior to the implementation of any changes, uncertainty as to the nature of alternative reference rates and as to potential changes to such benchmark may adversely affect such benchmark during the term of the Securities, the return on the Securities and the trading market for securities based on the same benchmark.

In accordance with the Conditions, the Securities may be subject to the adjustment of the interest provisions in certain circumstances. The circumstances which could trigger such adjustments are beyond the Issuer's control and the subsequent use of a replacement benchmark may result in changes to the Conditions (which could be extensive) and/or interest payments that are lower than or that do not otherwise correlate over time with the payments that could have been made on the Securities if the relevant benchmark remained available in its current form. Although pursuant to the Conditions, spread adjustments may be applied to such replacement benchmark (including with the intention of partially or wholly reducing or eliminating any economic prejudice or benefit (as applicable) to investors arising out of the replacement of the relevant benchmark), the application of such adjustments to the Securities may not achieve this objective. Any such changes may result in the Securities performing differently (which may include payment of a lower interest rate) than if the original benchmark continued to apply. There is no assurance that the characteristics of any replacement benchmark would be similar to the affected benchmark, that any replacement benchmark would produce the economic equivalent of the affected benchmark or would be a suitable replacement for the affected benchmark. The choice of replacement benchmark is uncertain and could result in the



replacement benchmark being unavailable or indeterminable. In certain circumstances, the ultimate fallback provisions may result in the effective application of a fixed interest rate to the Securities.

Furthermore, if the Issuer determines that it is not able to follow the prescribed steps set out in the Conditions, the relevant fallback provisions may not operate as intended at the relevant time. Any such consequence could have a material adverse effect on the trading markets for the Securities, the liquidity of the Securities and/or the value of and return on the Securities.

The Conditions may require the exercise of discretion by an independent adviser and the making of potentially subjective judgments (including as to the occurrence or not of any events which may trigger amendments to the Conditions) and/or the amendment of the Conditions without the consent of Securityholders. The interests of the independent adviser in making such determinations or amendments may be adverse to the interests of the Securityholders.

Moreover, any of the above matters or any other significant change to the setting or existence of any relevant reference rate could affect the ability of the Issuer to meet its obligations under the Securities if linked to a benchmark or could have a material adverse effect on the market value or liquidity of, and the amount payable under the Securities.

Investors should consider all of these matters when considering the Consent Solicitation and the Proposed Amendments.

### **Extraordinary Resolution binding**

If the Extraordinary Resolution is passed, it will be binding on all Securityholders (subject to the satisfaction of the Eligibility Condition), whether or not they choose to, or are able to, participate in the Consent Solicitation or otherwise vote at the relevant Meeting.

## **SECURITYHOLDER PROPOSAL**

Pursuant to this Notice, the Issuer has convened the Meeting to request that the holders of the Securities consider and agree by Extraordinary Resolution to the matters contained in the Extraordinary Resolution set out below.

The Issuer, under the Securityholder Proposal, is requesting that the Securityholders consider and if thought fit, pass the Extraordinary Resolution. If the Extraordinary Resolution is passed by the Securityholders, and if the Eligibility Condition is satisfied, the Extraordinary Resolution will be binding on all Securityholders, whether present or not at the Meeting and whether or not voting.

The Securityholder Proposal is being put to Securityholders for the reasons set out in "*Background*" above.

Eligible Securityholders are also referred to the Consent Solicitation Memorandum which provides further background to the Securityholder Proposal and the reasons therefor.

## **CONSENT SOLICITATION**

Securityholders are further given notice that the Issuer has invited Eligible Securityholders (as defined below) of the Securities (such invitation, the "**Consent Solicitation**") to consent to the

approval, by Extraordinary Resolution at the Meeting, of the modification of the terms and conditions (the "**Conditions**") of the Securities and the Trust Deed and execution of the Supplemental Trust Deed as described in paragraph 1 of the Extraordinary Resolution as set out below, all as further described in the Consent Solicitation Memorandum dated 12 January 2024 (the "**Consent Solicitation Memorandum**"), which is available to Eligible Securityholders (as defined below) from the Tabulation Agent (including on the website of the Tabulation Agent (<https://deals.is.kroll.com/nibc>)) (see "*Documents Available for Inspection*" below).

The Consent Solicitation Memorandum and any other documents or materials relating to the Consent Solicitation are only for distribution or to be made available to persons who are (i) located and resident outside the United States and not U.S. persons or acting for the account or benefit of a U.S. person (in each case, as defined in Regulation S under the U.S. Securities Act of 1933, as amended (the "**Securities Act**")), (ii) not retail investors (as defined in the Extraordinary Resolution below) and, if applicable and acting on a non-discretionary basis, who are acting on behalf of beneficial owners that are not retail investors, and (iii) otherwise persons to whom the Consent Solicitation can be lawfully made and that may lawfully participate in the Consent Solicitation (all such persons, "**Eligible Securityholders**").

Subject to the restrictions described in the previous paragraph, Securityholders may obtain from the date of this Notice a copy of the Consent Solicitation Memorandum from the Tabulation Agent, the contact details for which are set out below. In order to receive a copy of the Consent Solicitation Memorandum, a Securityholder will be required to provide confirmation as to their status as an Eligible Securityholder. Ineligibility to participate in the Consent Solicitation does not affect a Securityholder's right to attend and vote at the Meeting – see "*Voting and Quorum*" below.

### **Consent Fee**

Securityholders may be eligible, to the extent permitted by applicable laws and regulations, to receive an amount equal to the Consent Fee by delivering, or arranging to have delivered on their behalf, a valid Consent Instruction, that is received by the Tabulation Agent by the Expiration Deadline and not subsequently revoked (in the limited circumstances in which revocation is permitted).

Only Securityholders who (i) deliver, or arrange to have delivered on their behalf, valid Consent Instruction by the Expiration Deadline, and do not subsequently revoke (in the limited circumstances in which revocation is permitted) such instructions, and (ii) do not seek to attend the Meeting (or any adjourned Meeting) in person or make any other arrangements to be represented at the Meeting (or any adjourned Meeting), will be eligible for the applicable Consent Fee. Any Securityholder that separately seeks to appoint a proxy to vote at the Meeting (or any adjourned Meeting) on its behalf or attends the Meeting (or any adjourned such Meeting) in person or makes other arrangements to be represented at the Meeting (or any adjourned Meeting) will not be eligible for the Consent Fee, irrespective of whether such Securityholder has delivered a valid Consent Instruction.

If the Extraordinary Resolution is passed (subject to the satisfaction of the Eligibility Condition), any Consent Fee payable to Securityholders will be paid on the Fee Payment Date in immediately available funds delivered to the Clearing Systems for payment to the cash accounts of the relevant Securityholders in the Clearing Systems. As of the date hereof, the Fee Payment Date is expected to be 28 February 2024. The deposit of such funds with the Clearing

Systems will discharge the obligation of the Issuer to all Securityholders in respect of the above amounts represented by such funds.

In order to be eligible to receive the applicable Consent Fee, Securityholders will be required to submit instructions in accordance with the procedures set out herein. For the avoidance of doubt, Eligible Securityholders shall not be eligible to receive any Ineligible Holder Instruction Fee.

### **Ineligible Holder Instruction Fee**

Ineligible Securityholders may be eligible, to the extent permitted by applicable laws and regulations, to receive the Ineligible Holder Instruction Fee for delivering, or arranging to have delivered on their behalf, an Ineligible Holder Instruction waiving their right to attend and vote (or be represented) at the Meeting that is received by the Tabulation Agent by the Expiration Deadline and not subsequently revoked (in the limited circumstances in which revocation is permitted).

Only Ineligible Securityholders who deliver, or arrange to have delivered on their behalf, valid Ineligible Holder Instructions by the Expiration Deadline, and do not subsequently revoke (in the limited circumstances in which revocation is permitted) such instructions will be eligible for the applicable Ineligible Holder Instruction Fee.

If the Extraordinary Resolution is passed (subject to the satisfaction of the Eligibility Condition), any Ineligible Holder Instruction Fee payable to Securityholders will be paid on the Fee Payment Date in immediately available funds delivered to the Clearing Systems for payment to the cash accounts of the relevant Securityholders in the Clearing Systems. As of the date hereof, the Fee Payment Date is expected to be 28 February 2024. The deposit of such funds with the Clearing Systems will discharge the obligation of the Issuer to all Securityholders in respect of the above amounts represented by such funds.

In order to be eligible to receive the applicable Ineligible Holder Instruction Fee, Securityholders will be required to submit instructions in accordance with the procedures set out herein. For the avoidance of doubt, Ineligible Securityholders shall not be eligible to receive any Consent Fee.

## **EXTRAORDINARY RESOLUTION**

**"THAT** this Meeting of the holders (together, the "**Securityholders**") of the presently outstanding U.S.\$100,000,000 CMS Linked Perpetual Debt Securities (ISIN: XS0215294512) (the "**Securities**") of NIBC Bank N.V. (the "**Issuer**"), issued with the benefit of the Trust Deed dated 24 March 2005 (the "**Trust Deed**") made between the Issuer and The Law Debenture Trust Corporation p.l.c. (the "**Trustee**"):

1. (subject to paragraph 5 of this Extraordinary Resolution) assents to the modification of the terms and conditions of the Securities (the "**Conditions**") and the Trust Deed, and the execution of a Supplemental Trust Deed to effect such modifications, such that:
  - (a) for the purposes of any Interest Period beginning on or after the Interest Payment Date in March 2024 (expected to be 24 March 2024) the relevant Rate of Interest shall instead be the lower of:

- (i) the sum of:
- (A) the USD SOFR Spread Adjusted Swap Rate calculated on the basis of the following formula (the "**ARRC Recommended Formula**") on the relevant Interest Determination Date:

$$SOFR\ SA\ SR = \frac{365.25}{360} \left[ 2 \times (\sqrt{1 + SOFR\ SR} - 1) + \left( ISDA\ Spread\ (3m\ LIBOR) \times \frac{1}{2} \times (\sqrt[4]{1 + SOFR\ SR} + 1) \right) \right]$$

where:

"**SOFR SA SR**" is the USD SOFR Spread Adjusted Swap Rate (expressed as a percentage) with a maturity of 10-years commencing on the first day of the relevant Interest Period (the "**Designated Maturity**");

"**SOFR SR**" is the USD SOFR ICE Swap Rate (expressed as a percentage) in respect of the day falling two U.S. Government Securities Business Days prior to the first day of the relevant Interest Period (the "**Interest Determination Date**") with a maturity of the Designed Maturity; and

"**ISDA Spread (3m LIBOR)**" is 0.26161 per cent.; and

- (B) the Margin (which shall remain unaltered by these amendments); and
- (ii) 8.25 per cent.;
- (b) new fallback provisions relating to the USD SOFR ICE Swap Rate (or any component thereof) for the purposes of calculating the USD SOFR Spread Adjusted Swap Rate (including fallback provisions in case a Benchmark Transition Event occurs with respect to the USD SOFR ICE Swap Rate (or any component thereof)) are included in the Conditions of the Securities and consequential amendments to Clause 19.2 (*Modification*) of the Trust Deed in respect of any future modifications to the Conditions to give effect to any Benchmark Replacement Conforming Changes are included; and
- (c) a Contractual Recognition of Bail-in Clause is included in the Conditions.
2. (subject to paragraph 5 of this Extraordinary Resolution) authorises, directs, requests and empowers:
- (a) the Issuer and the Trustee to execute a supplemental trust deed (the "**Supplemental Trust Deed**") to effect the modifications referred to in paragraph 1 of this Extraordinary Resolution, in the form or substantially in the form of the draft produced to this Meeting, with such amendments thereto (if

any) as the Issuer and/or the Trustee shall deem necessary to effect such modifications; and

- (b) the Issuer and the Trustee to execute and to do all such other deeds, instruments, acts and things as may be necessary, desirable or expedient in its sole opinion to carry out and to give effect to this Extraordinary Resolution and the implementation of the modifications referred to in paragraph 1 of this Extraordinary Resolution;
3. (subject to paragraph 5 of this Extraordinary Resolution) sanctions and assents to every abrogation, modification, compromise or arrangement in respect of the rights of the Securityholders appertaining to the Securities against the Issuer, whether or not such rights arise under the Trust Deed, the Conditions or otherwise, involved in, resulting from or to be effected by the amendments referred to in paragraphs 1 and 2 of this Extraordinary Resolution and their implementation;
4. (subject to paragraph 5 of this Extraordinary Resolution) discharges and exonerates the Trustee from all liability for which it may have become or may become responsible under the Trust Deed, the Securities or any document related thereto in respect of any act or omission in connection with the passing of this Extraordinary Resolution or the executing of any deeds, agreements, documents or instructions, the performance of any acts, matters or things to be done to carry out and give effect to the matters contemplated in the Supplemental Trust Deed, the Original Meeting Notice, the Adjourned Meeting Notice or this Extraordinary Resolution;
5. declares that the implementation of this Extraordinary Resolution shall be conditional on:
  - (a) the passing of this Extraordinary Resolution; and
  - (b) the quorum required for, and the requisite majority of votes cast at, this Meeting being satisfied by Eligible Securityholders only, irrespective of any participation at this Meeting by Ineligible Securityholders (and would also have been so satisfied if any Ineligible Securityholders who provide confirmation of their status as Ineligible Securityholders and waive their right to attend and vote (or be represented) at the Meeting had actually participated at the Meeting) and further resolves that, if the Extraordinary Resolution is passed at this Meeting but such condition is not satisfied, the chairman of this Meeting and the Trustee are hereby authorised, directed, requested and empowered to adjourn this Meeting until such date, not less than 13 Clear Days nor more than 42 Clear Days later, and time and place as may be appointed by the chairman of this Meeting and approved by the Trustee, for the purpose of reconsidering resolutions 1 to 7 of this Extraordinary Resolution with the exception of resolution 5(b) of this Extraordinary Resolution, and in place of the provisions of resolution 5(b) the relevant condition will be satisfied if the quorum required for, and the requisite majority of votes cast at, the adjourned Meeting are satisfied by Eligible Securityholders only, irrespective of any participation at the adjourned Meeting by Ineligible Securityholders (and would also have been so satisfied if any Ineligible Securityholders who provide confirmation of their status as Ineligible Securityholders and waive their right to attend and vote (or

be represented) at the adjourned Meeting had actually participated at the adjourned Meeting);

6. acknowledges that the following terms, as used in this Extraordinary Resolution, shall have the meanings given below:

**"Adjourned Meeting Notice"** means the notice given by the Issuer to Securityholders on or around 5 February 2024 convening this Meeting;

**"Consent Solicitation in respect of the Securities"** means the invitation by the Issuer to all Eligible Securityholders to consent to the modification of the Conditions and Trust Deed relating to the Securities and the execution of the Supplemental Trust Deed, as described in the Consent Solicitation Memorandum and as the same may be amended in accordance with its terms;

**"Consent Solicitation Memorandum"** means the consent solicitation memorandum dated 12 January 2024 prepared by the Issuer in relation to the Consent Solicitation in respect of the Securities;

**"Eligible Securityholder"** means each Securityholder who is (a) located and resident outside the United States and not a U.S. person or acting for the account or benefit of a U.S. person (in each case, as defined in Regulation S under the Securities Act), (b) not a retail investor and, if applicable and acting on a non-discretionary basis, who is acting on behalf of a beneficial owner that is not a retail investor, and (c) otherwise a person to whom the Consent Solicitation in respect of the Securities can be lawfully made and that may lawfully participate in the Consent Solicitation in respect of the Securities;

**"Ineligible Securityholder"** means each Securityholder who is not an Eligible Securityholder;

**"Original Meeting Notice"** means the notice given by the Issuer to Securityholders on or around 12 January 2024 convening the Meeting of Securityholders on 5 February 2024;

**"retail investor"** means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU (as amended or superseded, "MiFID II"), (ii) a customer within the meaning of Directive 2016/97 (as amended, the "Insurance Distribution Directive"), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II, (iii) a retail client, as defined in point (8) of Article 2 of Regulation (EU) No 2017/565 as it forms part of UK domestic law by virtue of the European Union (Withdrawal) Act 2018 (as amended, the "EUWA"), or (iv) a customer within the meaning of the provisions of the Financial Services and Markets Act 2000 (as amended, the "FSMA") and any rules or regulations made under the FSMA which were relied on immediately before exit day to implement the Insurance Distribution Directive, where that customer would not qualify as a professional client, as defined in point (8) of Article 2(1) of Regulation (EU) No 600/2014 as it forms part of UK domestic law by virtue of the EUWA;

**"Securities Act"** means the U.S. Securities Act of 1933, as amended; and

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

7. agrees that capitalised terms in this document where not defined herein shall have the meanings given to them in the Trust Deed, the Original Meeting Notice or the Adjourned Meeting Notice, as applicable."

## **INELIGIBLE SECURITYHOLDERS**

### **Submission of Ineligible Holder Instructions**

Any Securityholder that is not an Eligible Securityholder may not participate in the Consent Solicitation and will not be eligible to receive the Consent Fee. However, any Ineligible Securityholder may deliver, or arrange to have delivered on its behalf, a valid Ineligible Holder Instruction (as defined below) and may be entitled to receive an Ineligible Holder Instruction Fee (as defined below). Ineligibility to participate in the Consent Solicitation does not affect a Securityholder's right to attend and vote at the Meeting – see "*Voting and Quorum*" below.

In respect of any Securities held through Euroclear Bank SA/NV ("**Euroclear**") or Clearstream Banking S.A. ("**Clearstream, Luxembourg**" and, together with Euroclear, the "**Clearing Systems**"), the submission of Ineligible Holder Instructions will have occurred upon receipt by the Tabulation Agent from Euroclear or Clearstream, Luxembourg, as applicable, of a valid instruction (an "**Ineligible Holder Instruction**") submitted in accordance with the requirements of Euroclear or Clearstream, Luxembourg, as applicable. Each such Ineligible Holder Instruction must specify, among other things, the aggregate principal amount of the Securities which are subject to such Ineligible Holder Instruction, and the securities account number at the relevant Clearing System in which the relevant Securities are held. The receipt of such Ineligible Holder Instruction by the relevant Clearing System will be acknowledged in accordance with the standard practices of such Clearing System and will result in the blocking of the relevant Securities in the relevant Ineligible Securityholder's account with such Clearing System so that no transfers may be effected in relation to such Securities until the earlier of (i) the date on which the relevant Ineligible Holder Instruction is validly revoked (in the limited circumstances in which revocation is permitted, including the automatic revocation of such Ineligible Holder Instruction on the termination of the Consent Solicitation in accordance with the terms of the Consent Solicitation) and (ii) the conclusion of the Meeting (or, if applicable, any adjourned Meeting).

Ineligible Securityholders who have submitted a valid Ineligible Holder Instruction waiving their right to attend and vote (or be represented) at the Meeting by the Expiration Deadline that has not subsequently been revoked (in the limited circumstances in which revocation is permitted) will be eligible to receive an amount equal to 0.50 per cent. of the principal amount of the relevant Securities (the "**Ineligible Holder Instruction Fee**"), subject to the successful passing of the Extraordinary Resolution and the satisfaction of the Eligibility Condition.

A Securityholder or a beneficial owner of the Securities who is, or who is believed by the Issuer to be, a Sanctions Restricted Person (as defined herein) may not participate in the Consent Solicitation and will not be eligible to receive the Ineligible Holder Instruction Fee.

Only Direct Participants (as defined under "*Voting and Quorum*" below) may submit Ineligible

Holder Instructions. Each beneficial owner of Securities who is an Ineligible Securityholder and is not a Direct Participant, must arrange for the Direct Participant through which such beneficial owner of Securities who is an Ineligible Securityholder holds its Securities to submit an Ineligible Holder Instruction on its behalf to the relevant Clearing System before the deadlines specified by the relevant Clearing System.

By delivering, or arranging for the delivery on its behalf, of an Ineligible Holder Instruction in accordance with the procedures described below, a Securityholder shall (A) waive its right to attend and vote (or be represented) at the Meeting (as the consequence of the eligibility condition set out in paragraph 5(b) of the Extraordinary Resolution is that the Extraordinary Resolution will only be implemented where it is passed irrespective of any participation at the Meeting by Ineligible Securityholders, such that the attendance and voting at the Meeting by an Ineligible Securityholder will be of no consequence for such implementation) and (B) agree, acknowledge, represent, warrant and undertake to the Issuer, the Sole Solicitation Agent, the Tabulation Agent, the Trustee or the Principal Paying Agent at (i) the time of submission of such Ineligible Holder Instruction, (ii) the Expiration Deadline, (iii) the time of the Meeting and (if applicable) at the time of the adjourned Meeting, (iv) the Implementation Date and (v) the Fee Payment Date (and if a Securityholder or Direct Participant (as defined below) on behalf of any Securityholder is unable to make any such agreement or acknowledgement or give any such representation, warranty or undertaking, such Securityholder or Direct Participant should contact the Tabulation Agent immediately) that:

- (a) It is an Ineligible Securityholder.
- (b) It is not a "**Sanctions Restricted Person**", being a person or entity (a "**Person**"): (A) that is, or is directly or indirectly owned or controlled by a Person that is, described or designated in (i) the most current "Specially Designated Nationals and Blocked Persons" list (which as of the date hereof can be found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>) or (ii) the most current Foreign Sanctions Evaders List (which as of the date hereof can be found at: <http://www.treasury.gov/ofac/downloads/fse/fselist.pdf>) or (iii) the most current "Consolidated list of persons, groups and entities subject to EU financial sanctions" (which as of the date hereof can be found at: <https://data.europa.eu/data/datasets/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions?locale=en>) or (iv) the most current consolidated list of UK financial sanctions targets (which as of the date hereof can be found at: <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>); or (B) that is otherwise the subject of any sanctions administered or enforced by any Sanctions Authority, other than solely by virtue of their inclusion in any of the following lists (and not other lists): (i) the most current "Sectoral Sanctions Identifications" list (which as of the date hereof can be found at: [http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/ssi\\_list.aspx](http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/ssi_list.aspx)) (the "**SSI List**"), (ii) Annexes III, IV, V, VI, XII and XIII of Council Regulation No. 833/2014, as amended by Council Regulation No. 960/2014 (the "**EU Annexes**"), (iii) Schedule 2 of the UK Sanctions (Russia) (EU Exit) Regulations 2019 (which as at the date hereof can be found at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1063155/InvBan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1063155/InvBan.pdf)), or (iv) any other list maintained by a Sanctions Authority, with similar effect to the SSI List or the EU Annexes. For these purposes "**Sanctions Authority**" means each of: (i) the United States government; (ii) the United



Nations; (iii) the European Union (or any of its member states); (iv) the United Kingdom; (v) any other equivalent governmental or regulatory authority, institution or agency which administers economic, financial or trade sanctions; and (vi) the respective governmental institutions and agencies of any of the foregoing including, without limitation, the Office of Foreign Assets Control of the US Department of the Treasury, the United States Department of State, the United States Department of Commerce and His Majesty's Treasury.

- (c) It has undertaken all appropriate analysis of the implications of the Consent Solicitation without reliance on the Issuer, the Sole Solicitation Agent, the Tabulation Agent, the Trustee or the Principal Paying Agent.
- (d) It has observed the laws of all relevant jurisdictions, obtained all requisite governmental, exchange control or other required consents, complied with all requisite formalities and paid any issue, transfer or other taxes or requisite payments due from it in each respect in connection with its Ineligible Holder Instruction and/or the Extraordinary Resolution in any jurisdiction and that it has not taken or omitted to take any action in breach of the representations or which will or may result in the Issuer, the Sole Solicitation Agent, the Tabulation Agent or any other person acting in breach of the legal or regulatory requirements of any such jurisdiction in connection with the Extraordinary Resolution.
- (e) Its Ineligible Holder Instruction is made on the terms and conditions set out in this Notice and therein.
- (f) Its Ineligible Holder Instruction is being submitted in compliance with the applicable laws or regulations of the jurisdiction in which the Securityholder is located or in which it is resident or located and no registration, approval or filing with any regulatory authority of such jurisdiction is required in connection with such Ineligible Holder Instruction.
- (g) It holds and will hold, until the earlier of (i) the date on which its Ineligible Holder Instruction is validly revoked (in the limited circumstances in which revocation is permitted), and (ii) conclusion of the Meeting or (if applicable) the adjourned Meeting, as the case may be, the Securities the subject of the Ineligible Holder Instruction, in the relevant Clearing System and in accordance with the requirements of the relevant Clearing System and by the deadline required by the relevant Clearing System, it has submitted, or has caused to be submitted, an Ineligible Holder Instruction to the relevant Clearing System, as the case may be, to authorise the blocking of such Securities with effect on and from the date thereof so that no transfers of such Securities may be effected until the occurrence of any of the events listed in (i) or (ii) above.
- (h) It acknowledges that none of the Issuer, the Sole Solicitation Agent, the Tabulation Agent, the Trustee and the Principal Paying Agent or any of their respective affiliates, directors, officers, employees, representatives or agents has made any recommendation as to whether to vote on the Extraordinary Resolution and it represents that it has made its own decision with regard to the Extraordinary Resolution based on any independent legal, financial, tax or other advice that it has deemed necessary to seek.
- (i) It acknowledges that all authority conferred or agreed to be conferred pursuant to these acknowledgements, representations, warranties and undertakings and every obligation

of the Securityholder offering to waive its right to vote on the Extraordinary Resolution shall to the extent permitted by applicable law be binding upon the successors, assigns, heirs, executors, trustees in bankruptcy and legal representatives of the Securityholder waiving its right to vote on the Extraordinary Resolution and shall not be affected by, and shall survive, the death or incapacity of the Securityholder waiving its right to vote on the Extraordinary Resolution, as the case may be.

- (j) It acknowledges that the Securities have not been and will not be registered under the Securities Act, or the securities laws of any state or other jurisdiction of the United States, and may not be offered or sold in the United States or to, or for the account or benefit of, U.S. persons, unless an exemption from the registration requirements of the Securities Act is available (terms used in this paragraph that are, unless otherwise specified, defined in Regulation S under the Securities Act are used as defined in Regulation S).
- (k) The information given by or on behalf of such Securityholder in the Ineligible Holder Instruction is true and will be true in all respects at the time of the Meeting (and, if applicable, at the time of the adjourned Meeting).
- (l) No information has been provided to it by the Issuer, the Sole Solicitation Agent, the Tabulation Agent, the Trustee or the Principal Paying Agent or any of their respective affiliates, directors, officers, employees, representatives or agents, with regard to the tax consequences for Securityholders arising from the participation in the Meeting or the implementation of the Extraordinary Resolution, and it acknowledges that it is solely liable for any taxes and similar or related payments imposed on it under the laws of any applicable jurisdiction as a result of its submission of the Ineligible Holder Instruction, and agrees that it will not and does not have any right of recourse (whether by way of reimbursement, indemnity or otherwise) against the Issuer, the Sole Solicitation Agent, the Tabulation Agent, the Trustee or the Principal Paying Agent or any of their respective affiliates, directors, officers, employees, representatives or agents, or any other person, in respect of such taxes and payments.

The representation set out in paragraph (b) above shall not be sought or given at any time after such representation is first made if and to the extent that it is or would result in a violation of Council Regulation (EC) No 2271/1996, as amended, including as it forms part of UK domestic law by virtue of the EUWA (the "**Blocking Regulation**"), or any applicable national law, instrument or regulation implementing the Blocking Regulation or imposing penalties for breach thereof.

**If the relevant Ineligible Securityholder is unable to give any of the representations and warranties described above, such Ineligible Securityholder should contact the Tabulation Agent.**

Each Ineligible Securityholder submitting an Ineligible Holder Instruction in accordance with its terms shall have agreed to indemnify the Issuer, the Sole Solicitation Agent, the Tabulation Agent, the Trustee, the Principal Paying Agent and each of their respective affiliates, directors, officers, employees, representatives or agents against all and any losses, costs, fees, claims, liabilities, expenses, charges, actions or demands which any of them may incur or which may be made against any of them as a result of any breach of any of the terms of, or any of the representations, warranties and/or undertakings given pursuant to, such instruction by such Securityholder.

All questions as to the validity, form and eligibility (including the time of receipt) of any Ineligible Holder Instructions or revocation (in the limited circumstances in which revocation is permitted) or revision thereof or delivery of Ineligible Holder Instructions will be determined by the Issuer in its sole discretion, which determination will be final and binding. The Issuer reserves the absolute right to reject any and all Ineligible Holder Instructions not in a form which is, in the opinion of the Issuer, lawful. The Issuer also reserves the absolute right to waive defects in Ineligible Holder Instructions with regard to any Securities. None of the Issuer, the Sole Solicitation Agent, the Tabulation Agent, the Trustee or the Principal Paying Agent shall be under any duty to give notice to Securityholders or beneficial owners of Securities of any irregularities in Ineligible Holder Instructions; nor shall any of them incur any liability for failure to give notification of any material amendments to the terms and conditions of the Consent Solicitation.

## REQUIREMENTS OF U.S. SECURITIES LAWS

In the event the Extraordinary Resolution is passed and implemented, the Supplemental Trust Deed will contain a statement that, until the expiry of the period of 40 days after the date of the Supplemental Trust Deed, sales of the Securities may not be made in the United States or to U.S. persons unless made outside the United States pursuant to Rules 903 and 904 of Regulation S under the Securities Act.

## GENERAL INFORMATION

**The attention of Securityholders is particularly drawn to the quorum required for the Meeting and for any other adjourned Meeting which is set out in paragraphs 1, 2, 3, 4 and 5 of "Voting and Quorum" below. Having regard to such requirements, Securityholders are strongly urged either to attend the Meeting or to take steps to be represented at the Meeting (including by way of submitting a valid electronic voting instruction to the relevant Clearing System (a "Consent Instruction") or Ineligible Holder Instruction) as soon as possible.**

## VOTING AND QUORUM

*Securityholders who have submitted and not revoked (in the limited circumstances in which revocation is permitted) a valid Consent Instruction or Ineligible Holder Instruction in respect of the Extraordinary Resolution by 4:00 p.m. (London time) / 5:00 p.m. (CET) on 16 February 2024 (the "**Expiration Deadline**"), by which they will (i) (in the case of Consent Instructions) have given instructions to the Tabulation Agent for the appointment by the Principal Paying Agent of one or more representatives of the Tabulation Agent as its proxy to vote in the manner specified or identified in such Consent Instruction at the Meeting (or any adjourned such Meeting) or (ii) (in the case of Ineligible Holder Instructions) waived such rights, need take no further action to be represented at the Meeting (or any such adjourned such Meeting).*

*Securityholders who have not submitted, or who have submitted and revoked (in the limited circumstances in which revocation is permitted), a Consent Instruction or Ineligible Holder Instruction in respect of the Extraordinary Resolution by the Expiration Deadline should take note of the provisions set out below detailing how such Securityholders can attend or take steps to be represented at the Meeting (references to which, for the purposes of such provisions, include, unless the context otherwise requires, any adjourned such Meeting).*

*For the avoidance of doubt, Securityholders who have already submitted Consent Instructions or Ineligible Holder Instructions prior to the date of this Notice have the option to leave such instructions unchanged or revoke such instructions. In the event that a Securityholder elects to revoke a previously submitted Consent Instruction or Ineligible Holder Instruction, nothing shall prevent the relevant Securityholder from submitting a further Consent Instruction or Ineligible Holder Instruction prior to the Expiration Deadline referred to above.*

1. Subject as set out below, the provisions governing the convening and holding of the Meeting are set out in Schedule 3 (*Provisions for Meetings of Securityholders*) to the Trust Deed, a copy of which is available for inspection by the Securityholders during normal business hours at the specified offices of the Trustee on any weekday (public holidays excepted).

All of the Securities are represented by a global security and are held by a common depositary for Euroclear and Clearstream, Luxembourg. For the purpose of the Meeting, a "**Direct Participant**" shall mean each person who is for the time being shown in the records of Euroclear or Clearstream, Luxembourg as the holder of a particular principal amount outstanding of the Securities.

Each person (a "**beneficial owner**") who is the owner of a particular principal amount of the Securities through Euroclear, Clearstream, Luxembourg or a Direct Participant, should note that a beneficial owner will only be entitled to attend and vote at the Meeting in accordance with the procedures set out below and where a beneficial owner is not a Direct Participant it will need to make the necessary arrangements, either directly or with the intermediary through which it holds its Securities, for the Direct Participant to complete these procedures on its behalf by all applicable deadlines.

A Direct Participant or beneficial owner of Securities wishing to attend the Meeting in person must produce at the Meeting a valid voting certificate issued by the Principal Paying Agent relating to the Securities in respect of which such Direct Participant or beneficial owner wishes to vote.

A Direct Participant not wishing to attend the Meeting in person may (or the beneficial owner of the relevant Securities may arrange for the relevant Direct Participant on its behalf to) give a voting instruction to the Tabulation Agent (by giving an electronic instruction to block its Securities and to vote in respect of the Meeting to Euroclear or Clearstream, Luxembourg in accordance with the procedures of Euroclear or Clearstream, Luxembourg, as applicable) requiring the Principal Paying Agent to include the votes attributable to its Securities in a block voting instruction issued by the Principal Paying Agent for the Meeting or any adjourned such Meeting, and the Principal Paying Agent shall appoint one or more representatives of the Tabulation Agent as its proxy to attend and vote at the Meeting in accordance with such Direct Participant's instructions. A Direct Participant holding Securities and not wishing to attend the Meeting in person may alternatively deliver its voting certificate to the person whom it wishes to attend the Meeting on its behalf.

Securities may be blocked in the Clearing Systems for the purposes of appointing proxies under block voting instructions or obtaining voting certificates until 48 Hours before the time fixed for the Meeting.

Accordingly, beneficial owners or their Direct Participants must have made arrangements to vote with the relevant Clearing System by not later than 48 Hours before the time fixed for the Meeting (or any adjourned such Meeting) and within the relevant time limit specified by the relevant Clearing System (who may set a significantly earlier deadline) and request or make arrangements for the relevant Clearing System to block the Securities in the relevant Direct Participant's account and to hold the same to the order or under the control of the Tabulation Agent.

Securities blocked as set out above will not be released until the earlier of (i) the date on which the relevant electronic voting and blocking instruction is validly revoked (in the limited circumstances in which revocation is permitted, including its automatic revocation on the termination of the Consent Solicitation); (ii) the conclusion of the Meeting (or, if applicable, any adjourned such Meeting); and (iii) not less than 48 Hours before the time for which the Meeting (or, if applicable, any adjourned such Meeting) is convened, the notification in writing of any revocation of a Direct Participant's previous instructions to the Tabulation Agent.

Securityholders should note that the timings and procedures set out in this notice reflect the requirements for Securityholders' Meetings set out in the Trust Deed, but that the Clearing Systems and the relevant intermediaries may have their own additional requirements as to timings and procedures for voting on the Extraordinary Resolution. Accordingly, Securityholders wishing to vote in respect of the Extraordinary Resolution are strongly urged either to contact their custodian (in the case of a beneficial owner whose Securities are held in book-entry form by a custodian) or the relevant Clearing System (in the case of a Securityholder whose Securities are held in book-entry form directly in the relevant Clearing System), as soon as possible.

2. At the Meeting (or any adjourned Meeting thereafter), one or more eligible persons present and holding or representing in the aggregate not less than one-third of the principal amount of the Securities for the time being outstanding shall (subject as provided below) form a quorum and shall have the power to pass the Extraordinary Resolution.
3. To be passed at the Meeting, the Extraordinary Resolution requires a majority in favour consisting of not less than three-fourths of the votes cast at the Meeting.

The question submitted to the Meeting shall be decided in the first instance by a show of hands unless there is only one voter or unless a poll is (before, or on the declaration of the result of, the show of hands) demanded by the chairman of the Meeting, the Issuer or by one or more persons present holding Securities or voting certificates or being proxies (whatever the principal amount of the Securities so held by them). Unless a poll is validly demanded before or at the time that the result is declared, the Chairman's declaration that on a show of hands a resolution has been passed, passed by a particular majority, rejected or rejected by a particular majority shall be conclusive, without proof of the number of votes cast for, or against, the resolution.

At the Meeting, (A) on a show of hands every person who is present in person and who produces a form of proxy or is otherwise a proxy or representative has one vote and (B) on a poll every such person has one vote in respect of each U.S.\$1.00 of principal amount of Securities so represented by the voting certificate so produced or for which he is otherwise a proxy or representative.

4. The implementation of the Consent Solicitation and the Extraordinary Resolution will be conditional on:
  - (a) the passing of the Extraordinary Resolution; and
  - (b) the quorum required for, and the requisite majority of votes cast at, the Meeting being satisfied by Eligible Securityholders only, irrespective of any participation at the Meeting by Ineligible Securityholders (and would also have been so satisfied if any Ineligible Securityholders who provide confirmation only of their status as Ineligible Securityholders and waive their right to attend and vote (or be represented) at the Meeting had actually participated at such Meeting), including, if applicable, the satisfaction of such condition at an adjourned Meeting (the "**Eligibility Condition**"),  
  
(together, the "**Consent Conditions**").
5. If passed, the Extraordinary Resolution passed at the Meeting will be binding upon all the Securityholders, whether present or not at the Meeting and whether or not voting.

#### **DOCUMENTS AVAILABLE FOR INSPECTION**

Copies of items (a) to (c) below (together, the "**Securityholder Information**") will be available from the date of this Notice, for inspection during normal business hours at the specified offices of the Trustee on any weekday (public holidays excepted) and on the website of the Tabulation Agent (<https://deals.is.kroll.com/nibc>).

- (a) this Notice;
- (b) the current draft of the Supplemental Trust Deed, being the Supplemental Trust Deed as referred to in the Extraordinary Resolution set out above (the "**Supplemental Trust Deed**"); and
- (c) such other ancillary documents as may be approved by the Trustee and/or such other relevant party as are necessary or desirable to give effect to the Securityholder Proposal in full.

This Notice should be read in conjunction with the Securityholder Information.

The Securityholder Information may be supplemented from time to time. Securityholders should note that the Supplemental Trust Deed may be subject to amendment (where such amendments are in line with the Proposed Amendments) up until 7 days prior to the date fixed for the Meeting. Should such amendments be made, blacklined copies (showing the changes from the originally available Supplemental Trust Deed) and clean versions will be available from the Tabulation Agent (including on the website of the Tabulation Agent (<https://deals.is.kroll.com/nibc>)).

Securityholders will be informed of any such amendments to the Supplemental Trust Deed by announcements released via the website of Euronext Amsterdam.

## CONTACT INFORMATION

Further information relating to the Proposed Amendments can be obtained from the Sole Solicitation Agent directly:

### THE SOLE SOLICITATION AGENT

**NatWest Markets N.V.**  
Claude Debussylaan 94  
1082 MD Amsterdam  
The Netherlands

**Attention:** Liability Management

**Telephone:** +44 20 7085 6124

**Email:** [NWMLiabilityManagement@natwestmarkets.com](mailto:NWMLiabilityManagement@natwestmarkets.com)

The contact details for the Tabulation Agent and the Trustee are set out below:

### THE TABULATION AGENT Kroll Issuer Services Limited

The Shard  
32 London Bridge Street  
London SE1 9SG  
United Kingdom

**Telephone:** +44 207 704 0880

**Attention:** Arlind Bytyqi / Paul Kamminga

**Email:** [nibc@is.kroll.com](mailto:nibc@is.kroll.com)

**Website:** <https://deals.is.kroll.com/nibc>

### THE TRUSTEE The Law Debenture Trust Corporation p.l.c.

8th Floor  
100 Bishopsgate  
London EC2N 4AG  
United Kingdom

The Deal Roadshow login details in respect of this Consent Solicitation are set out below:

### DEAL ROADSHOW INVESTOR LOGIN DETAILS

**URL:** <https://dealroadshow.com>

**Entry Code:** NIBCBank2024

**Direct Link:** <https://dealroadshow.com/e/NIBCBank2024>

Securityholders whose Securities are held by Euroclear or Clearstream, Luxembourg should contact the Tabulation Agent at the address details above for further information on the process for voting at the Meeting.

## ANNOUNCEMENTS

If the Issuer is required to make an announcement relating to matters set out in this Notice, any such announcement will be made in accordance with all applicable rules and regulations via notices to the Clearing Systems for communication to Direct Participants and an announcement published via the website of Euronext Amsterdam.

This Notice is given by:

**NIBC Bank N.V.**

Dated: 5 February 2024



## ANNEX TO THE NOTICE OF ADJOURNED SECURITYHOLDER MEETING

### AMENDMENTS TO THE CONDITIONS

The following amendments will be made to the Conditions of the Securities:

#### 1. Amendments to preamble

The preamble to the Conditions shall be amended by the deletion in full of the first paragraph thereof and the insertion of the following text in its place (where the reference to "[DATE]" shall be replaced with the final Implementation Date):

"The U.S.\$100,000,000 CMS Linked Perpetual Debt Securities (the **Securities**, which expression shall in these Conditions, unless the context otherwise requires, include any further Securities issued pursuant to Condition 17 and forming a single series with the Securities) of NIBC Bank N.V. (the **Bank**) are constituted by a Trust Deed dated 24th March, 2005 as supplemented by the Supplemental Trust Deed dated [DATE] (together, the **Trust Deed**) made between the Bank and The Law Debenture Trust Corporation p.l.c. (the **Trustee**, which expression shall include its successor(s)) as trustee for the holders of the Securities (the **Securityholders**) and the holders of the interest coupons appertaining to the Securities (the **Couponholders** and the **Coupons** respectively, which expressions shall, unless the context otherwise requires, include the talons for further interest coupons (the **Talons**) and the holders of the Talons)."

#### 2. Amendments to Condition 3.3

Condition 3.3 shall, with effect from the Interest Payment Date (and related Interest Determination Date) falling in March 2024, be deleted and replaced with the following:

"The rate of interest payable from time to time in respect of the Securities (the **Rate of Interest**) will be determined on the basis of the following provisions:

- (a) On each Interest Determination Date, Citibank, N.A., London Branch or its duly appointed successor (in such capacity, the **Agent Bank**) will determine the USD SOFR Spread Adjusted Swap Rate on that Interest Determination Date in accordance with the following formula:

$$SOFR\ SA\ SR = \frac{365.25}{360} \left[ 2 \times \left( \sqrt{1 + SOFR\ SR} - 1 \right) + \left( ISDA\ Spread\ (3m\ LIBOR) \times \frac{1}{2} \times \left( \sqrt[4]{1 + SOFR\ SR} + 1 \right) \right) \right]$$

where:

**SOFR SA SR** is the USD SOFR Spread Adjusted Swap Rate (expressed as a percentage) with a maturity of 10-years commencing on the first day of the relevant Interest Period (the **Designated Maturity**);

**SOFR SR** is the USD SOFR ICE Swap Rate (expressed as a percentage) in respect of the Interest Determination Date with a maturity of the Designed Maturity; and

**ISDA Spread (3m LIBOR)** is 0.26161 per cent.

- (b) In no event shall the Rate of Interest be more than 8.25 per cent. per annum.
- (c) The Rate of Interest for the Interest Period shall be the lower of: (i) the sum of the USD SOFR Spread Adjusted Swap Rate plus the Margin; and (ii) 8.25 per cent.
- (d) Subject to the operation of Condition 3.9, if the Rate of Interest cannot be determined in accordance with the above provisions, the Rate of Interest shall be determined as at the last preceding Interest Determination Date."

### **3. Insertion of new Condition 3.9**

A new Condition 3.9 shall be inserted immediately after Condition 3.8, as follows:

#### **"3.9 Benchmark Discontinuation**

- (a) Notwithstanding anything to the contrary in these Conditions, if the Issuer determines at any time that a Benchmark Transition Event has occurred in relation to the Relevant Benchmark or any component thereof when any Rate of Interest remains to be determined by reference to the Relevant Benchmark, the Issuer will use reasonable endeavours to appoint an Independent Adviser to determine, or to advise the Issuer in determining, a Benchmark Replacement and the applicable Benchmark Replacement Adjustment and any other amendments to the terms of the Securities (including, without limitation, any Benchmark Replacement Conforming Changes).
- (b) In making such determination, the Issuer shall act in good faith and a commercially reasonable manner as an expert. In the absence of fraud, the Issuer and the Independent Adviser, as applicable, shall have no liability whatsoever to the Issuer, the Trustee, the Agent Bank, the Securityholders or the Couponholders for any determination made by it, any variation of these Conditions or for any advice given to the Issuer in connection with any determination made by the Issuer, pursuant to this Condition 3.9.
- (c) If the Issuer is unable to appoint an Independent Adviser in accordance with this Condition 3.9, the Issuer, acting in good faith, may still make any determinations and/or any amendments contemplated by and in accordance with this Condition 3.9 (with the relevant provisions in this Condition 3.9 applying *mutatis mutandis* to allow such determinations or amendments to be made by the Issuer without consultation with an Independent Adviser).
- (d) Where this Condition 3.9 applies, without prejudice to the definitions set out herein, for the purposes of making any determination contemplated by this Condition 3.9, the Issuer will take into account any relevant and applicable market precedents and customary market usage as well as any published

guidance from relevant associations involved in the establishment of market standards and/or protocols in the international debt capital markets.

- (e) None of the Trustee, the Principal Paying Agent, the Agent Bank or the Paying Agents shall be responsible or liable for any determinations, decisions or elections made by the Issuer or the Independent Adviser pursuant to this Condition 3.9 including, without limitation, with respect to any waivers or consequential amendments to be effected pursuant to this Condition 3.9 and shall be entitled to rely conclusively on any determination notified to each of them in this regard.
- (f) If a Benchmark Transition Event occurs in relation to the Relevant Benchmark (or any component thereof) when any Rate of Interest remains to be determined by reference to the Relevant Benchmark, then the following provisions shall apply:
  - (i) subject to Condition 3.9(f)(ii), if the Independent Adviser or the Issuer, following consultation with its Independent Adviser, no later than five Business Days prior to the Interest Determination Date relating to the next Interest Period (the **Determination Cut-Off Date**) determines the Benchmark Replacement for the purposes of determining the Rate of Interest applicable to the Securities for all future Interest Periods (subject to the subsequent operation of this Condition 3.9(f) during any other future Interest Period(s)), then such Benchmark Replacement shall be the Relevant Benchmark for all future Interest Periods (subject to the subsequent operation of this Condition 3.9(f) during any other future Interest Period(s)); and
  - (ii) notwithstanding Condition 3.9(f)(i), if the Independent Adviser or the Issuer, following consultation with its Independent Adviser, determines prior to the Determination Cut-Off Date that no Benchmark Replacement exists then the relevant Rate of Interest shall be determined using the Relevant Benchmark (or component parts thereof) last displayed on the relevant screen prior to the relevant Interest Determination Date, as applicable. This Condition 3.9(f)(ii) shall apply to the relevant Interest Period only. Any subsequent Interest Period(s) shall be subject to the subsequent operation of, and adjustment as provided in, this Condition 3.9(f).
- (g) The Independent Adviser or the Issuer, in consultation with the Independent Adviser, (as applicable) (acting in good faith and in a commercially reasonable manner) may in its discretion specify:
  - (i) changes to these Conditions in order to follow market practice in relation to such Benchmark Replacement (as applicable), including, but not limited to, the method for determining the fallback to the Relevant Benchmark in respect of the calculation of the Rate of Interest in relation to the Securities if such Benchmark Replacement is not available; and

- (ii) any other changes which the Independent Adviser or the Issuer, in consultation with the Independent Adviser, (as applicable) determines are reasonably necessary to ensure the proper operation and comparability to the Relevant Benchmark of such Benchmark Replacement (as applicable),

(the **Benchmark Replacement Conforming Changes**) which changes shall apply to the Securities for all future Interest Periods (subject to the subsequent operation of this Condition 3.9 during any other future Interest Period(s)).

- (h) Promptly following the determination of (i) any Benchmark Replacement and (ii) if applicable, any Benchmark Replacement Adjustment, but in any event not later than the Determination Cut-Off Date, the Issuer shall give notice thereof, and of any variation of the Conditions to give effect to any Benchmark Replacement Conforming Changes pursuant to Condition 3.9(g) (and the effective date thereof), to the Trustee, the Principal Paying Agent, the Agent Bank and the Securityholders in accordance with Condition 14.
- (i) No consent of the Securityholders, holders of Talons or Couponholders shall be required in connection with effecting the relevant Benchmark Replacement or Benchmark Replacement Adjustment (as applicable) as described in this Condition 3.9 or such variation of the Conditions to give effect to any Benchmark Replacement Conforming Change pursuant to Condition 3.9(g) including for the execution of any documents or the taking of other steps by the Issuer, and the Trustee shall be obliged, without the consent or sanction of the Securityholders (including without the requirement to provide to Securityholders an opportunity to object), to concur with the Issuer or the Independent Adviser (as applicable) in making any modification (other than in respect of a matter contemplated in paragraph 7 of Schedule 3 (*Provisions for Meetings of Securityholders*) to the Trust Deed (a **Reserved Matter**), *provided that* neither replacing the Relevant Benchmark with the Benchmark Replacement nor any Benchmark Replacement Conforming Changes shall constitute a Reserved Matter) to the Conditions or the Trust Deed that the Issuer or the Independent Adviser (as applicable) certifies to the Trustee is necessary or appropriate to give effect to the provisions set forth under this Condition 3.9 (and the Trustee shall be entitled to rely on such certificate without further enquiry or liability to any person, and for the avoidance of doubt, the Trustee shall not be liable to the Securityholders, the holders of any Talons or Coupons or any other person for so acting or relying on such certificate, irrespective of whether any such modification is or may be materially prejudicial to the interests of any such person), *provided that* the Trustee shall not be obliged to effect any such modification if, in the sole opinion of the Trustee, doing so would impose more onerous obligations upon it or expose it to any additional duties, responsibilities or liabilities or reduce or amend the protective provisions afforded to the Trustee in these Conditions, the Trust Deed and/or the Agency Agreement in any way.
- (j) For the avoidance of doubt, the Principal Paying Agent, the Agent Bank and the Paying Agents shall, at the direction and expense of the Issuer, effect such waivers and consequential amendments to the Agency Agreement and these

Conditions as may be required to give effect to this Condition 3.9 provided that the Principal Paying Agent, the Agent Bank and the Paying Agents shall not be obliged to effect any Benchmark Replacement Adjustments if in the sole opinion of any of the Principal Paying Agent, the Agent Bank and the Paying Agents and the Paying Agents doing so would impose more onerous obligations upon it or expose it to any additional duties, responsibilities or liabilities or reduce or amend the protective provisions afforded to the relevant Principal Paying Agent, the Agent Bank and the Paying Agents in these Conditions and/or the Agency Agreement in any way.

- (k) In no event shall the Agent Bank be responsible for determining any Benchmark Transition Event or Benchmark Replacement Conforming Changes. The Agent Bank shall be entitled to conclusively rely on any determinations made by the Issuer or the Independent Adviser and will have no liability for such actions taken at the direction of the Issuer or the Independent Adviser. Notwithstanding any other provision of this Condition 3.9, if in the Agent Bank's opinion there is any uncertainty in making any determination or calculation under this Condition 3.9, the Agent Bank shall promptly notify the Issuer thereof and the Issuer shall direct the Agent Bank in writing as to which course of action to adopt. If the Agent Bank is not promptly provided with such direction, or is otherwise unable to make such calculation or determination for any reason, it shall notify the Issuer thereof and the Agent Bank shall be under no obligation to make such calculation or determination and shall not incur any liability for not doing so."

#### **4. Amendments to Condition 15.2**

A new paragraph shall be inserted after the first paragraph of Condition 15.2 as follows:

"The Trustee shall be obliged, without the consent or sanction of the Securityholders (including without the requirement to provide to Securityholders an opportunity to object), to concur with the Issuer or the Independent Adviser (as applicable) in making any modification to the Conditions or the Trust Deed in connection with effecting the relevant Benchmark Replacement or Benchmark Replacement Adjustment (as applicable) as described in Condition 3.9 or such variation of the Conditions to give effect to any Benchmark Replacement Conforming Change pursuant to Condition 3.9(g) (other than in respect of a matter contemplated in paragraph 7 of Schedule 3 (*Provisions for Meetings of Securityholders*) to the Trust Deed (a **Reserved Matter**), *provided that* neither replacing the Relevant Benchmark with the Benchmark Replacement nor any Benchmark Replacement Conforming Changes shall constitute a Reserved Matter) to the Conditions or the Trust Deed that the Issuer or the Independent Adviser (as applicable) certifies to the Trustee is necessary or appropriate to give effect to the provisions set forth under this Condition 3.9 (and the Trustee shall be entitled to rely on such certificate without further enquiry or liability to any person, and for the avoidance of doubt, the Trustee shall not be liable to the Securityholders, the holders of any Talons or Coupons or any other person for so acting or relying on such certificate, irrespective of whether any such modification is or may be materially prejudicial to the interests of any such person), *provided that* the Trustee shall not be obliged to effect any such modification if, in the sole opinion of the Trustee, doing so would impose more onerous obligations upon it or expose it to any additional duties, responsibilities

or liabilities or reduce or amend the protective provisions afforded to the Trustee in these Conditions, the Trust Deed and/or the Agency Agreement in any way."

## 5. Amendments to Condition 20

Condition 20 shall be amended as follows (with any new definitions included in the appropriate places in alphabetical order):

- (i) the deletion of the definition of "**Fallback CMS Rate**" in its entirety;
- (ii) the deletion of the definition of "**Mid-market annual swap rate**" in its entirety;
- (iii) the deletion of the definition of "**Reference Banks**" in its entirety;
- (iv) the deletion of the definition of "**Screen Rate**" in its entirety;
- (v) the amendment of the definition of "**Interest Determination Date**" as follows:

**Interest Determination Date** means, in respect of any Interest Period, the day that is two U.S. Government Securities Business Days preceding the first day of such Interest Period.

- (vi) the inclusion of the following definition:

**2006 ISDA Definitions** means the 2006 ISDA Definitions as published by ISDA (copies of which may be obtained from ISDA at [www.isda.org](http://www.isda.org)).

- (vii) the inclusion of the following definition:

**Benchmark Replacement** means the first alternative set forth in the order below that can be determined by the Issuer, following consultation with its Independent Adviser:

- (i) the sum of (A) the alternate benchmark that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Relevant Benchmark for the applicable Corresponding Tenor and (B) the Benchmark Replacement Adjustment;
- (ii) the sum of (A) the ISDA Fallback Rate and (B) the Benchmark Replacement Adjustment; or
- (iii) the sum of (A) the alternate benchmark that has been selected by the Issuer, in consultation with the Independent Adviser, as the replacement for the then-current Relevant Benchmark for the applicable Corresponding Tenor giving due consideration to any industry-accepted benchmark as a replacement for the then-current Relevant Benchmark for U.S. dollar denominated floating rate notes at such time and (B) the Benchmark Replacement Adjustment.

- (viii) the inclusion of the following definition:

**Benchmark Replacement Adjustment** means the first alternative set forth in the order below that can be determined by the Issuer, following consultation with its Independent Adviser:

- (i) the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero) that has been selected or recommended by the Relevant Governmental Body for the applicable Unadjusted Benchmark Replacement;
- (ii) if the applicable Unadjusted Benchmark Replacement is equivalent to the ISDA Fallback Rate, then the ISDA Spread Adjustment; or
- (iii) the spread adjustment (which may be a positive or negative value or zero) determined by the Issuer, following consultation with its Independent Adviser, giving due consideration to any industry accepted spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Relevant Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar denominated floating rate notes at such time.

- (ix) the inclusion of the following definition:

**Benchmark Replacement Conforming Changes** has the meaning given thereto in Condition 3.9.

- (x) the inclusion of the following definition:

**Benchmark Transition Event** means the occurrence of one or more of the following events with respect to the then-current Relevant Benchmark (or any component part thereof):

- (i) a public statement or publication of information by or on behalf of the administrator of the Relevant Benchmark (or such component) announcing that such administrator has ceased or will cease to provide the Relevant Benchmark (or such component), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Relevant Benchmark (or such component);
- (ii) a public statement or publication of information by the regulatory supervisor for the administrator of the Relevant Benchmark (or such component), the central bank for the currency of the Relevant Benchmark (or such component), an insolvency official with jurisdiction over the administrator for the Relevant Benchmark (or such component), a resolution authority with jurisdiction over the administrator for the Relevant Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for the Relevant Benchmark (or such component), which states that the administrator of the Relevant Benchmark (or such component) has ceased or will cease to provide the Relevant Benchmark (or such component) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Relevant Benchmark (or such component); or
- (iii) a public statement or publication of information by the regulatory supervisor for the administrator of the Relevant Benchmark (or such component)

announcing that the Relevant Benchmark (or such component) is no longer representative,

*provided that* the Benchmark Transition Event shall be deemed to occur (A) in the case of subparagraphs (i) and (ii) above, on the later of (x) the date of the public statement or publication of information referenced therein and (y) the date on which the administrator of the Relevant Benchmark (or such component) permanently or indefinitely ceases to provide the Relevant Benchmark (or such component), or (B) in the case of sub-paragraph (iii) above, on the date of the public statement or publication of information referenced therein (each such date, a **Benchmark Replacement Date**).

(xi) the inclusion of the following definition:

**Corresponding Tenor** with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding business day adjustment) as the applicable tenor for the then-current Relevant Benchmark.

(xii) the inclusion of the following definition:

**Designated Maturity** has the meaning given in Condition 3.3.

(xiii) the inclusion of the following definition:

**Independent Adviser** means an independent financial institution of international repute or other independent financial adviser experienced in the international debt capital markets, in each case appointed by the Issuer at its own expense.

(xiv) the inclusion of the following definition:

**ISDA** means the International Swaps and Derivatives Association, Inc. (or any successor).

(xv) the inclusion of the following definition:

**ISDA Fallback Adjustment** means the spread adjustment (which may be a positive or negative value or zero) that would apply for derivatives transactions referencing the 2006 ISDA Definitions to be determined upon the occurrence of an index cessation event with respect to the Relevant Benchmark.

(xvi) the inclusion of the following definition:

**ISDA Fallback Rate** means the rate that would apply for derivatives transactions referencing the 2006 ISDA Definitions to be effective upon the occurrence of an index cessation date with respect to the Relevant Benchmark for the applicable tenor excluding the applicable ISDA Fallback Adjustment.

(xvii) the inclusion of the following definition:

**ISDA Spread Adjustment** means the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero) that shall have been selected by ISDA as the spread adjustment that would apply to the ISDA Fallback Rate.



(xviii) the inclusion of the following definition:

**Relevant Benchmark** means, initially, the USD SOFR ICE Swap Rate, provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the USD SOFR ICE Swap Rate or the then current Relevant Benchmark, then **Relevant Benchmark** means the applicable Benchmark Replacement.

(xix) the inclusion of the following definition:

**Relevant Governmental Body** means the Board of Governors of the Federal Reserve System and/or the NY Federal Reserve or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System and/or the NY Federal Reserve, or any successor.

(xx) the inclusion of the following definition:

**SOFR** means the Secured Overnight Financing Rate administered by the Federal Reserve Bank of New York (or any successor administrator).

(xxi) the inclusion of the following definition:

**Unadjusted Benchmark Replacement** means the Benchmark Replacement excluding the applicable Benchmark Replacement Adjustment.

(xxii) the inclusion of the following definition:

**USD SOFR ICE Swap Rate** means the benchmark for the mid-price for the fixed leg of a fixed-for-floating U.S. Dollar swap transaction where the floating leg references SOFR and both the fixed leg and floating leg are paid annually, as provided by ICE Benchmark Administration Limited as the administrator of the benchmark (or a successor administrator).

(xxiii) the inclusion of the following definition:

**USD SOFR Spread Adjusted Swap Rate** means the rate determined by the Agent Bank in accordance with Condition 3.3.

(xxiv) the inclusion of the following definition:

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

## **6. Insertion of new Condition 19**

A new Condition 19 shall be inserted immediately after Condition 18.3 as follows and the numbering of the existing Condition 19 (*Rights of Third Parties*) and Condition 20 (*Definitions*) shall be deemed updated accordingly:

## **"19. Agreement and Acknowledgement with respect to the exercise of Bail-in Power**

19.1 Notwithstanding and to the exclusion of any other term of the Securities or any other agreements, arrangements, or understandings between the Issuer and any Securityholder, by its acquisition of the Securities, each Securityholder (which, for the purposes of this clause, includes each holder of a beneficial interest in the Securities), acknowledges and accepts that the Amounts Due arising under these Securities may be subject to the exercise of Bail-in Powers by the Resolution Authority, and acknowledges, accepts, consents and agrees to be bound by:

- (a) the effect of the exercise of Bail-in Power by the Resolution Authority, that may include and result in any of the following, or some combination thereof:
  - (i) the reduction of all, or a portion, of the Amounts Due;
  - (ii) the conversion of all, or a portion, of the Amounts Due on the Securities into shares, other securities or other obligations of the Issuer or another person (and the issue to or conferral on the Securityholder of such shares, securities or obligations), including by means of an amendment, modification or variation of the terms of the Securities;
  - (iii) the cancellation of the Securities; and/or
  - (iv) the amendment or alteration of the maturity of the Securities or amendment of the amount of interest payable on the Securities, or the date on which the interest becomes payable, including by suspending payment for a temporary period; and
- (b) the variation of the terms of the Securities, if necessary, to give effect to the exercise of Bail-in Power by the Resolution Authority.

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

19.3 Neither a reduction or cancellation, in part or in full, of the Amounts Due, the conversion thereof into another security or obligation of the Issuer or another person, as a result of the exercise of the Bail-in Power by the Resolution Authority with respect to the Issuer, nor the exercise of the Bail-in Power by the Resolution Authority with respect to the Securities will be an Event of Default.

19.4 Upon the exercise of the Bail-in Power by the Resolution Authority with respect to the Securities, the Issuer will provide a written notice to the Securityholders in accordance with Condition 14 (*Notices*) as soon as practicable regarding such exercise of the Bail-in Power. The Issuer will also deliver a copy of such notice to the Trustee and Principal Paying Agent for information purposes.

19.5 For the purposes of this Condition 19:

**Amounts Due** are the principal amount of, together with any accrued but unpaid interest due on, the Securities. References to such amounts will include amounts that have become due and payable, but which have not been paid, prior to the exercise of Bail-in Power by the Resolution Authority;

**Bail-in Legislation** means the Dutch BRRD Implementation Act (*Implementatiewet Europees kader voor herstel en afwikkeling van banken en beleggingsondernemingen*) and any other law or regulation applicable in The Netherlands relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings);

**Bail-in Power** means any write-down, conversion, transfer, modification or suspension power existing from time to time under, and exercised in compliance with, any law or regulation in effect in The Netherlands, relating to the transposition of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, including but not limited to the Bail-in Legislation and Regulation (EU) No 806/2014 and the instruments, rules and standards created thereunder, pursuant to which any obligation of a bank or investment firm or affiliate of a bank or investment firm can be reduced, cancelled, modified or converted into shares, other securities or other obligations of such entity or any other person (or suspended for a temporary period); and

**Resolution Authority** means the Dutch Central Bank (*De Nederlandsche Bank N.V.*) (or any successor or replacement thereto and/or such other authority with the ability to exercise any Bail-in Power in respect of the Issuer)."

## AMENDMENTS TO THE TRUST DEED

The following amendments will be made to the Trust Deed:

### 1. Amendments to Clause 19.2

A new paragraph shall be inserted after the first paragraph of Clause 19.2 as follows:

"The Trustee shall be obliged, without the consent or sanction of the Securityholders (including without the requirement to provide to Securityholders an opportunity to object), to concur with the Issuer or the Independent Adviser (as applicable) in making any modification to these presents in connection with effecting the relevant Benchmark Replacement or Benchmark Replacement Adjustment (as applicable) as described in Condition 3.9 or such variation of the Conditions to give effect to any Benchmark Replacement Conforming Change pursuant to Condition 3.9(g) (other than in respect of a matter contemplated in paragraph 7 of Schedule 3 (*Provisions for Meetings of Securityholders*) hereto (a **Reserved Matter**), provided that neither replacing the Relevant Benchmark with the Benchmark Replacement nor any Benchmark Replacement Conforming Changes shall constitute a Reserved Matter) to the Conditions or the Trust Deed that the Issuer or the Independent Adviser (as applicable) certifies to the Trustee is necessary or appropriate to give effect to the provisions set forth under this Condition 3.9 (and the Trustee shall be entitled to rely on such certificate without further enquiry or liability to any person, and for the avoidance of doubt, the Trustee shall not be liable to the Securityholders, the holders of any Talons or Coupons or any other person for so acting or relying on such certificate, irrespective of whether any such modification is or may be

materially prejudicial to the interests of any such person), provided that the Trustee shall not be obliged to effect any such modification if, in the sole opinion of the Trustee, doing so would impose more onerous obligations upon it or expose it to any additional duties, responsibilities or liabilities or reduce or amend the protective provisions afforded to the Trustee in the Conditions, this Trust Deed and/or the Agency Agreement in any way."