

**Carrard Consulting SA**

To the creditors of Banque Privée  
Espírito Santo SA in liquidation

Lausanne, March 2022

*This translation is provided for information purposes only – in case of discrepancy with the original French version, the French version shall prevail.*

**Banque Privée Espírito Santo SA in liquidation (BPES): Circular no. 29 for the attention of BPES creditors – status of liquidation operations at the end of 2021**

Dear Sir/ Madam,

The purpose of this circular is to provide BPES creditors with a summary on the progress of liquidation operations at the end of 2021. It informs the creditors of the major steps that have been undertaken by the liquidator and on the main ongoing and future liquidation operations. Its content is not exhaustive but, in the interests of transparency, it seeks to provide the creditors with comprehensive information on the situation to date. The liquidator makes no warranty as to the content of the information, since the liquidator is not solely responsible for the accuracy and truthfulness thereof.

This circular is accompanied by circular no. 30 of the liquidator concerning the transfer of certain claims and a plan for the realisation of assets.

This circular is sent, together with the aforementioned documents, by registered mail only to creditors (i) who are third-ranked in the creditors' priority ranking filed in April 2017 or in the additional creditors' priority ranking of October 2020, or (ii) whose rejection of the third-class claim was the subject of an action disputing the creditors' priority ranking which has not been definitively settled against the creditor, or (iii) who have had the processing of their claim suspended in the creditors' priority ranking or (iv) whose claim was generated late and has not yet been processed by the liquidator. It is also published on the liquidator's website.

**1. Progress of liquidation operations and staff situation**

Liquidation activities are still carried out at the premises of Carrard Consulting SA, Lausanne, Place St-François 7, case postale 5671, 1002 Lausanne, Switzerland. The bankruptcy estate has not remunerated any employee of the bank since 30 June 2016.

## 2. Ongoing banking activity and IT systems

A person employed by the liquidator continues to carry out securities transactions and verifications of the assets recorded in the books at BPES and with custodians, including the cash assets of former customers. This person also regularly verifies the cash assets available to the bankruptcy estate.

## 3. Key liquidation figures

The key liquidation figures can be summarised as follows:

	At 31 December 2021		At 31 December 2020	
- Cash available to the bankruptcy estate <sup>1</sup> :	CHF 42.1 million		CHF 60.6 million	
- Segregated cash (customer assets):	CHF 17.8 million		CHF 18.7 million	
- Number of securities positions held by customers with BPES <sup>2</sup> :	100		133	
- Distribution of liquidation dividend in favour of creditors:	Paid as at 31/12/2021 (in CHF)	Still due as at 31/12/2021 (in CHF)	Paid as at 31/12/20 (in CHF)	Still due as at 31/12/20 (in CHF)
• 1st-class creditors <sup>3</sup> :	838,053	2,469	838,053	2,469
• 2nd-class creditors (excluding preferred deposits):	512,994	-	512,994	-
• 2nd-class creditors (preferred deposits only):	17,742,028	1,828,469	17,684,547	1,885,950

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<sup>1</sup> Excluding segregated cash (customer assets).

<sup>2</sup> Excluding securities issued by Espírito Santo Group entities.

<sup>3</sup> This item does not include social security contributions owed to pension funds related to employee claims admitted to the creditors' priority ranking or benefits paid under the emergency social plan.

<ul style="list-style-type: none"> <li>3<sup>rd</sup>-class creditors (first provisional distribution)<sup>4</sup>:</li> </ul>	18,782,699	8,594,889 <sup>5</sup>	16,767,964	10,094,681
<ul style="list-style-type: none"> <li>3<sup>rd</sup>-class creditors (second provisional distribution):</li> </ul>	14,963,103	6,731,332 <sup>5</sup>	N/A	N/A

Segregated cash of approximately CHF 17.8 million consists of customer assets still deposited with BPES due to uncertainty over their legal fate, criminal sequestrators, because they are the subject of a dispute among several announced holders or because they have not been claimed to date.

The first provisional distribution of BPES' liquidation dividend in the amount of 2.8% made it possible to pay more than CHF 18.7 million to third-class creditors. The second provisional distribution of 2.2% made it possible to pay around CHF 15 million to these same creditors. These amounts include the release of the 30% deduction for claims for damages in connection with investments in Espírito Santo Group securities where the creditors concerned have waived their Espírito Santo group securities and/or have transferred to the estate their claims arising from fiduciary investments with group companies (for more information on the 30% deduction in respect of claims for damages, creditors are invited to read circular no. 14 of the liquidator).

Many ranked creditors have not yet been properly announced to date, despite a follow-up campaign initiated by the liquidator during 2021 to contact both creditors and clients whose assets were still deposited with BPES.

#### **4. Generation of claims in the companies of the Espírito Santo Group**

No decision has been taken so far by the administrators of the Luxembourg companies Espírito Santo International SA ('ESI'), Rio Forte Investments SA ('Rio Forte'), ESFIL - Espírito Santo Financière SA ('ESFIL') and Espírito Santo Financial Group SA ('ESFG') on claims produced by the liquidator on behalf of BPES and on behalf of former BPES customers.

Information on the status of each of these entities is available on the Luxembourg administrators website: <http://www.espiritosantoinsoyencies.lu/>.

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<sup>4</sup> The increase in the total amount due under the first provisional distribution is explained by the deposit of an additional creditors' priority ranking report, in which 3<sup>rd</sup>-class claims participating in the first provisional distribution of funds were accepted.

<sup>5</sup> This amount is before a 30% deduction on claims for damages; it does not take into account any claims of the estate arising after the bankruptcy, which could be opposed for set-off.

As indicated in the 2020 report, the Office for Bankruptcies of the Eastern District of Vaud rejected the claims generated by the liquidator in the ancillary bankruptcies of ESI and Rio Forte initiated in Switzerland, following the recognition of the bankruptcy judgements pronounced in Luxembourg against these entities. The liquidator contested these decisions by filing an action to dispute the creditors' priority ranking before the competent judicial authorities. The proceedings are stayed and discussions are underway with the administrators of ESI and Rio Forte.

## **5. Inventory of assets and realisation**

### **a) General**

The inventory of assets is available to creditors. In summary, the following items may be disclosed to creditors in relation to 2021:

- The estate won the case in several legal proceedings for recovery (recovery of debts, revocatory claims), for amounts representing approximately CHF 500,000;
- The estate collected an amount of CHF 100,000 in performance of a settlement agreement with a former independent manager;
- The estate collected an amount close to CHF 200,000 following the signing of a settlement agreement with a former agent (debt recovery);
- Securities deposited in the nostro account of the estate were able to be sold for more than CHF 33,000;
- Loans, unsecured or secured with collateral consisting of group securities or non-group securities, amounted to CHF 122 million at the start of the bankruptcy. An amount in the order of CHF 24 million has been recovered or repaid to date.

The above figures do not include the realisations described in the asset realisation plan (circular no. 30) attached to this circular.

### **b) Transfer of claims**

By circular no. 28 of the liquidator, the estate assigned the claims against a company in the Espírito Santo group and a former agent. No creditor requested the assignment of the rights of the estate.

A plan for the realisation of the assets was also published in the same circular, which did not give rise to any dispute.

c) Transfer of liability claims against bodies

By circular no. 11, the liquidator offered to assign to creditors the liability claims against the corporate bodies of BPES and the corporate bodies of the other companies of the Espírito Santo Group, including the corporate bodies of ESI and Rio Forte, as well as contractual claims based on various insurance policies.

Transferee creditors acted within the deadline set by the liquidator by initiating action against certain bodies and the proceedings are continuing.

d) Custody fees

The invoicing of custody fees for 2021 for the Espírito Santo Group shares and the non-transferable securities enabled the estate to receive a total amount of around CHF 138,000.

Custody fees in the same amount have been invoiced for 2022.

## **6. Additional creditors' priority ranking and distribution of liquidation dividend**

The liquidator filed an additional creditors' priority ranking on 29 October 2020, in which claims were accepted for approximately CHF 30 million (late claims and claims until then suspended) in 3<sup>rd</sup>-class claims. Two actions disputing the creditors' priority ranking were filed by creditors whose claims had been rejected, in whole or in part.

One of it was the subject of a settlement agreement with ES Bankers (Dubai) Limited in liquidation (Settlement Agreement III), approved by the Supervisory Committee and by which the liquidator agreed to rank the claim (current-account) of ES Bankers (Dubai) Limited in liquidation as 3<sup>rd</sup> class for CHF 4.5 million, with no claims being admitted as 2<sup>nd</sup> class as a preferential deposit. ES Bankers (Dubai) Limited in liquidation has undertaken to withdraw its challenge of the creditors' priority ranking once all the terms of the settlement agreement have been completed. Only one challenge is still being disputed with a creditor.

As a reminder, the Supervisory Committee (at its meeting of 11 November 2020 and by way of circulation) and FINMA (by correspondence of 1 February 2021) approved a second provisional distribution of 2.2% of the liquidation dividend, bringing the total estimated liquidation dividend to 5%, for creditors admitted to the creditors' priority ranking of April 2017. The liquidator requested and obtained a similar authorisation for claims admitted to the supplementary creditors' priority ranking of October 2020. The 30% deduction in relation to claims for damages also applies to this second provisional distribution of liquidation dividend for the creditors affected (see, however, figure 3 above).

Creditors who have not yet sent the necessary information and documents for payment are invited to do so as soon as possible. All information is available on the liquidator's website (see figure 14 below).

## **7. Ongoing legal proceedings**

As at 31 December 2021, some ten or so legal proceedings involving BPES were pending before the Swiss courts, with the exception of proceedings initiated in the United States and British Virgin Islands by the liquidators of the Madoff and Fairfield funds ('Madoff proceedings').

These are essentially proceedings disputing creditor's prioritisation decisions made by the liquidator in April 2017 and October 2020, as well as revocatory procedures.

With regard to the Madoff proceedings, the liquidator has obtained approval from the Supervisory Committee to reduce the amount of the assets of the customers concerned and retained by the liquidator in order to cover the costs of the proceedings: thus, the liquidator now only retains 10% of the amount of the recursory claims against each customer concerned, as the balance of the assets can be released.

## **8. QI and FATCA reporting**

The liquidator complied with the obligations arising from the QI Agreement and the FATCA. It has undertaken the formalities required by the QI Agreement for the 2018-2020 certification period, as was done for the 2014-2017 period. Insofar as, in 2020, BPES ceased to act as a qualified intermediary following the sale or transfer of any products or investments generating US reportable income, BPES terminated the QI Agreement. Following this termination, the QI Responsible Officer was required to complete the final certification in 2021. With regard to FATCA, BPES, as the Reporting Model 2 Foreign (Swiss) Financial Institution Model 2 (hereinafter "FFI") must certify that it has the correct and complete documentation of the ad hoc and periodic procedures as required by the FFI Agreement for the 2018-2020 certification period, as was done for the 2014-2017 period. The FATCA Responsible Officer is required to periodically certify the FFI's internal controls and compliance with the FFI Agreement. Both reports were submitted to the IRS within the deadline of 30 June 2021.

On 20 September 2019, the Protocol of 23 September 2009 (the "Protocol") amending the Convention of 2 October 1996 between the Swiss Confederation and the United States of America for the Avoidance of Double Taxation in Income Taxes (CDI CH-US; RS 0.672.933.61) entered into force. It has created the necessary legal basis, in the context of and as required by Article 5 of the FATCA Agreement, for or group requests and the US IRS can now submit group requests to the Federal Tax Administration. In the context of grouped requests under FATCA, the IRS may request – on the basis of the information provided in aggregate form by the Swiss financial institution – all information concerning US accounts without a declaration of consent and foreign amounts subject to disclosure paid to non-participating financial institutions without a declaration of consent that the reporting Swiss financial institution should have communicated in accordance with an FFI agreement if it had obtained the corresponding consent declaration (FATCA-XML file; see Art. 5 para. 1 of the FATCA Agreement). Given this new legal basis, BPES has prepared since May 2020 in order to anticipate the receipt of FATCA group requests insofar as it was expected that a very short deadline (10 days) would be set to deliver the information to the AFC

following receipt of a production order. With the assistance of PEQ solutions GmbH, the files for the years 2014 to 2020 have been prepared according to the instructions of the AFC. On 19 February 2021, BPES received a production order with its appendices regarding the expected group request and was able to transmit the required information within 10 days. The AFC informed BPES by email of 17 March that it would publish in the Swiss Official Gazette of Commerce (SOGC), on 23 March 2021, information that it had received the FATCA group requests from BPES and that the persons and establishments concerned would then have 20 days to take a position on the planned transmission of their data. This deadline expired on 12 April, without any statement from the AFC or BPES.

## **9. Indictment by the Portuguese criminal authorities**

The liquidator was informed by the Public Prosecutor of the Swiss Confederation of the existence of an indictment published by the Portuguese criminal authorities related to the collapse of the Espírito Santo group. The liquidator took cognizance of this with the help of its local advisor and carried out its analysis in order to retain any assets of the defendants that may be known to BPES. As the Public Prosecutor of Swiss Confederation is aware of this indictment, no further steps have been taken, in particular with a view to the criminal sequestration of any assets deposited with BPES.

## **10. Negative interest**

As of 1 October 2021, the liquidator shall deduct negative interest on the assets of customers and creditors who have not provided valid bank details for the payment of the amounts owed to them. These assets will be deducted on a monthly basis, although accounting is complex due to the number of transactions.

## **11. BPES Supervisory Committee**

The BPES Supervisory Committee, established by a FINMA decision of 19 May 2016, met four times in 2021. In particular, the Supervisory Committee discussed the following topics:

- The settlements entered into by the estate with certain creditors and debtors of the estate, including entities of the Espírito Santo group;
- The approval of an additional distribution of liquidation dividend in favour of certain creditors;
- The position of the bankruptcy estate in the Madoff proceedings;
- The approval of certain budgets for external service providers and third-party agents, particularly in connection with the transfer of valuable securities to a third-party banking institution;
- The transfer to creditors of certain claims of the estate;
- Validation of the liquidator's fees (see figure 12 below).

## 12. Costs of the bankruptcy estate

The detailed breakdown of costs of the estate is provided on a quarterly basis to FINMA. In accordance with Article 36(2) AMLO-FINMA, the final account is subject to FINMA approval.

As at 31 December 2021, the costs of the bankruptcy estate as from the start of the bankruptcy amounted to approximately CHF 42.4 million.

The estate costs were incurred in order to carry out the liquidation operations themselves but also, to a very large extent, for the purpose of maintaining the human, technical and IT resources necessary for deviating the segregated assets in favour of former BPES clients, whose amount on the date of the bankruptcy exceeded CHF 5.5 billion, as well as the activities related to ownership of these assets (including relations and reporting to Swiss and foreign criminal, civil and administrative authorities).

The estate costs for 2021 break down as follows:

- Information/ communications/ technology:	CHF 218,000
- Carrard Consulting SA fees:	CHF 845,000
- External agents:	CHF 384,000
- Supervisory Committee fees:	CHF 31,000
- General expenses:	CHF 65,000
- Custody fees and negative interest <sup>6</sup> :	CHF 87,000
<b>Total (rounded):</b>	<b>CHF 1,630,000</b>

Estate proceeds for 2021 amounted to approximately CHF 280,000.

Appendix 1 details the estate costs and proceeds as of 19 September 2014.

The Supervisory Committee has not objected to the fees of the liquidator submitted to it.

## 13. Next steps in the liquidation

The next steps in the liquidation are described below. However, it is important to reserve any difficulties that the liquidator may encounter in the performance of its duties.

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<sup>6</sup> This amount is net of custody fees and negative interest charged to the customers.



2022 will be dedicated to negotiating with the administrators of Espírito Santo Group companies to process intra-group claims and finalise the interim final account.

Pending legal proceedings will continue during 2022, as will payment of the provisional dividend to creditors who have not yet received it. The liquidator will also likely be required to provide information and particulars to the transferee creditors as part of liability claims against the corporate bodies.

For the remainder, the liquidator will continue to carry out the usual liquidation operations of a banking institution through bankruptcy proceedings.

#### **14. Invitation to visit the website**

The liquidator publishes information on the BPES website, which may be accessed at: [www.liquidator-bpes.ch](http://www.liquidator-bpes.ch). Please visit it regularly so that you are aware of this information.

The liquidator is at your disposal should you have any queries about this document.

Yours faithfully,

The liquidator, Carrard Consulting SA

## **Appendix 1 - Costs of the estate**