

BANQUE PRIVÉE  
ESPÍRITO SANTO



Pully, March 30, 2015

**Banque Privée Espirito Santo SA en liquidation (BPES) / Communication regarding foreign exchange (forex) forward operations**

Madam, Sir,

You have subscribed to one or several foreign exchange (forex) forward operations with a term posterior to the bankruptcy of BPES, opened on September 19, 2014, at 8am. The purpose of this letter is to provide information on how such forex forward operations will be handled in the bankruptcy of BPES.

Article 211 paragraph 2bis of the Federal Act on Debt Enforcement and Bankruptcy (LP) applies to forex forward operations and provides that such operations do not continue until their maturity date but are automatically terminated at the time of bankruptcy.

Article 211 paragraph 2bis LP states that the “bankruptcy administration and the counterparty are both entitled to claim the difference between the agreed value and the market value on the bankruptcy date”. It is then a matter of comparing the agreed value and the “term” or “forward” market value of the contract on the bankruptcy date (replacement value). This results either in a claim in favor of BPES or in favor of the client:

- *Claim in favor of the client.* From a legal point of view, the claim arising from article 211 paragraph 2bis LP is considered as a damage claim, for which the damage is calculated in an abstract manner (see the report of September 1, 1993, from the “Federal Office of Justice” (OJ) regarding the new regulation provided by article 211 LP, p. 1314 ff.). This claim is a bankruptcy dividend (OJ report, *ibid*, p. 1315) and does not benefit from the privileged deposit guarantee. Since such claim is accounted for in the books of the bank, it will be verified and registered in the inventory of claims even in the absence of any claim submission (article 26 letter b OIB-FINMA). If the claim is in a foreign currency, it will be converted into Swiss francs using the market exchange rate (“spot” rate) on the date of the bankruptcy.
- *Claim in favor of the bankruptcy estate.* In such situation, the claim will be recovered according to the usual process (set-off, invoice, prosecution in the absence of payment). If the client still has assets deposited with the bank, BPES will proceed to a set-off with the claim resulting from the forex forward operations, provided that no such set-off will be effected with privileged deposits (article 37 LB).

BPES has applied the principles set out above and has therefore automatically terminated the forex contracts as well as calculated the related claim in accordance with article 211 paragraph 2bis LP.

Yours faithfully,

**Carrard Consulting SA**