



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

MARK E. VAN DER WEIDE  
GENERAL COUNSEL

May 20, 2022

Donald Toumey, Esq.  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004-2498

Dear Mr. Toumey:

This letter responds to your request for an opinion that Popular, Inc. ("Popular"), would not control Evertec, Inc. ("Evertec"), both of San Juan, Puerto Rico, for purposes of the Bank Holding Company Act of 1956 ("BHC Act"), following Popular's proposed reduction of its ownership of Evertec's voting shares from approximately 16.2 percent to less than five percent. Popular is a bank holding company under the BHC Act. Popular controls Banco Popular De Puerto Rico ("Bank"), San Juan, Puerto Rico, a state member bank.

For purposes of the BHC Act and Regulation Y, a company has control over another company if the first company (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company; (ii) controls in any manner the election of a majority of the directors of the other company; or (iii) directly or indirectly exercises a controlling influence over the management or policies of the other company.<sup>1</sup> In addition, Regulation Y sets forth presumptions of control.<sup>2</sup> The BHC Act and Regulation Y also set forth presumptions of noncontrol.<sup>3</sup>

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<sup>1</sup> 12 U.S.C. § 1841(a)(2); *see also* 12 CFR 225.2(e)(1).

<sup>2</sup> *See* 12 CFR 225.32; *see also* Control and Divestiture Proceedings, 85 FR 12398 (Mar. 2, 2020).

<sup>3</sup> 12 U.S.C. § 1841(a)(3); 12 CFR 225.33(a).

Popular owns approximately 16.2 percent of the voting common stock of Evertec and does not have any other form of ownership interest in Evertec, including any options to acquire, or instruments convertible into, any such interests. More than five percent of the total annual revenues of Evertec are attributable to Popular's business relationships with the firm. In addition, Popular has certain contractual rights with respect to Evertec, including the right to nominate two directors for election to Evertec's board of directors, preemptive rights in connection with issuances of stock by Evertec, and registration rights for Popular's shareholdings of the common stock of Evertec. Considering Popular's current ownership interest and business relationships with Evertec, Popular is presumed to control Evertec pursuant to the Board's Regulation Y.<sup>4</sup>

Popular proposes a series of transactions that would reduce its ownership interest in the voting common stock of Evertec to less than five percent. Specifically, Bank has agreed to purchase certain information technology and related assets from Evertec Group, LLC ("Evertec LLC"), San Juan, Puerto Rico, a wholly owned subsidiary of Evertec (the "Asset Purchase"). As part of the Asset Purchase, Popular would transfer some of its voting common stock of Evertec to Evertec LLC as consideration. After consummation of the Asset Purchase, Popular would own approximately 10.5 percent of the voting common stock of Evertec. Popular has agreed to use commercially reasonable efforts to sell additional shares of Evertec to third parties within 90 days of consummation of the Asset Purchase to reduce Popular's ownership interest to less than five percent of the voting common stock of Evertec. At the end of this 90-day period, the amount of Evertec voting common stock owned by Popular in excess of 4.5 percent, if any, would be exchanged for nonvoting preferred stock without any additional action by Popular.<sup>5</sup> As a result of these transactions, Popular would own less than five percent of the outstanding voting common stock of Evertec.

Upon consummation of all the proposed transactions, it appears that Popular would not trigger any of the presumptions of control under the Board's Regulation Y, and would trigger the presumptions of noncontrol in the BHC Act and

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<sup>4</sup> 12 CFR 225.32(e)(3)(ii).

<sup>5</sup> Pursuant to Evertec's governing documents, the nonvoting preferred stock would be convertible into voting securities only under the circumstances specified in section 225.9(a)(3) of Regulation Y and, therefore, would not be considered voting securities for purposes of Regulation Y. 12 CFR 225.9(a)(3); *see also* 12 CFR 225.9(q)(2) (defining "nonvoting securities").

Regulation Y, with respect to Evertec.<sup>6</sup> Based on all the facts of record in this case, and specifically conditioned on compliance with all the representations made in connection with your request, staff of the Legal Division would not recommend that the Board find Popular to control Evertec for purposes of the BHC Act upon Popular's reduction of its ownership interest in Evertec to less than five percent of the voting common stock of Evertec.

This opinion is based on all the facts of record, including all the representations and commitments made by or on behalf of Popular, whether noted in this letter or otherwise contained in correspondence or discussions with staff of the Board or the Federal Reserve Bank of New York. Any change in the facts or representations may result in a different opinion and should be reported immediately to Board and Reserve Bank staff.

If you have any questions about this matter, please contact Brian Phillips, Counsel (202-452-3321), or Josh Strazanac, Counsel (202-452-2457) of my staff.

Sincerely,

Mark E. Van Der Weide (signed)

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<sup>6</sup> 12 U.S.C. § 1841(a)(3); 12 CFR 225.33(a).