

# **SUPPLEMENTAL INFORMATION MEMORANDUM**

**XENON CAPITAL PUBLIC LIMITED COMPANY**  
**(incorporated with limited liability in Ireland under registered number 351106)**

**Series 224 EUR17,500,000 Limited Recourse Floating Rate Commodity Index-Linked Secured Notes  
due 2016**

**This Supplemental Information Memorandum includes the Issue Terms relating to the Securities.  
Investors should note that such Issue Terms supersede in their entirety any termsheets which may  
have been circulated previously.**

**The Securities are only intended for highly sophisticated and knowledgeable investors who are capable  
of understanding and evaluating the risks involved in investing in the Securities and who are required  
to read "Risk Factors" on pages 4 to 14.**

***Merrill Lynch International***

**The date of this Supplemental Information Memorandum is 01 April 2011**

## GENERAL

This Supplemental Information Memorandum under which the Series 224 EUR17,500,000 Limited Recourse Floating Rate Commodity Index-Linked Secured Notes due 2016 (the **Securities**) are described is supplemental to the Information Memorandum dated 22 March 2011 (the **Information Memorandum**) relating to the U.S.\$50,000,000,000 Limited Recourse Secured Debt Issuance Programme (the **Programme**) of Xenon Capital Public Limited Company (the **Issuer**) and is issued in conjunction with, and incorporates by reference, the Information Memorandum. This Supplemental Information Memorandum constitutes a prospectus issued in compliance with Directive 2003/71/EC (the **Prospectus Directive**) and relevant laws of Ireland. It should be read together with the Information Memorandum as one document. To the extent that the Information Memorandum is inconsistent with this Supplemental Information Memorandum, this Supplemental Information Memorandum shall prevail. Terms defined in the Information Memorandum shall, unless the context otherwise requires, bear the same meanings herein.

Save as disclosed herein, there has been no significant change and no matter has arisen since publication of the Information Memorandum.

The Issuer accepts responsibility for the information contained in this Supplemental Information Memorandum. To the best of the knowledge and belief of the Issuer (which has taken all reasonable care to ensure that such is the case) the information contained in this Supplemental Information Memorandum is in accordance with the facts and does not omit anything likely to affect the import of such information.

Application has been made to the Irish Stock Exchange (the **Irish Stock Exchange**) for the Securities to be admitted to the Official List and trading on its regulated market. There can be no assurance that any such admission to trading will be obtained.

The Supplemental Information Memorandum has been approved by the Central Bank of Ireland (the **Central Bank**) as competent authority under the Prospectus Directive. The Central Bank only approves this prospectus as meeting the requirements imposed under Irish and EU law pursuant to the Prospectus Directive.

The information relating to the Initial Asset Swap Charged Assets, the Counterparties, the Commodity Swap Guarantor, the Commodity Index (each as defined herein) and the issuers of the Initial Asset Swap Charged Assets (the **Initial Underlying Obligors**) has been accurately reproduced from information published by the Counterparties, the Commodity Swap Guarantor, the Initial Underlying Obligors and the relevant index sponsors. Such information has been accurately reproduced from such sources and, so far as the Issuer is aware and is able to ascertain from such sources, no facts have been omitted from such sources which would render the reproduced information inaccurate or misleading.

The Securities will not be rated.

Neither the delivery of this Supplemental Information Memorandum nor the offering, sale or delivery of any Securities shall in any circumstances imply that the information contained herein is correct at any time subsequent to the date hereof or that any other information supplied in connection with the Securities is correct as of any time subsequent to the date indicated in the document containing the same.

No person is or has been authorised by the Issuer to give any information or to make any representation not contained in or not consistent with this Supplemental Information Memorandum or any other information supplied in connection with the Programme or the Securities and, if given or made, such information or representation must not be relied upon as having been authorised by the Issuer, the Trustee (as defined herein) or the Dealer (as defined herein).

The Issuer's annual financial statements for the financial years ended 31 December 2008 and 31 December 2009 which have previously been published, have been filed with the Irish Stock Exchange and shall be incorporated in, and form part of, this Supplemental Information Memorandum.

This Supplemental Information Memorandum does not constitute, and may not be used for the purposes of, an offer or solicitation by anyone in any jurisdiction in which such offer or solicitation is not authorised or to any person to whom it is unlawful to make such offer or solicitation, and no action is being taken by the Issuer, the Trustee or the Dealer (save for the approval of this document as a prospectus by the Central Bank) to permit an offering of the Securities or the distribution of this Supplemental Information Memorandum in any jurisdiction where such action is required.

**Claims of the Securityholders and the Counterparties will be limited in recourse to the Mortgaged Property.**

**The Securities have not been and will not be registered under the U.S. Securities Act of 1933 (the Securities Act). Consequently, the Securities may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (as defined in Regulation S under the Securities Act) except in certain transactions exempt from, or not subject to, the registration requirements of the Securities Act.**

The Issuer is not and will not be regulated by the Central Bank as a result of issuing the Securities. Any investment in the Securities does not have the status of a bank deposit and is not within the scope of the deposit protection scheme operated by the Central Bank.

In connection with the issue of the Securities, the Dealer (the **Stabilising Manager**) (or persons acting on behalf of the Stabilising Manager) may over-allot the Securities or effect transactions with a view to supporting the market price of the Securities at a level higher than that which might otherwise prevail. However, there is no assurance that the Stabilising Manager (or persons acting on behalf of the Stabilising Manager) will undertake stabilisation action. Any stabilisation action may begin on or after the date on which adequate public disclosure of the terms of the offer of the Securities is made and, if begun, may be ended at any time, but it must end no later than the earlier of 30 days after the issue date of the Securities and 60 days after the date of allotment of the Securities. Any stabilisation action or over-allotment shall be conducted in accordance with all applicable laws and rules.

## TABLE OF CONTENTS

|  | <b>Page</b> |
|--|-------------|
| Risk Factors.....  | 5           |
| Issue Terms .....  | 16          |
| Bearer Securities Base Conditions Module.....  | 29          |
| General Definitions Module.....  | 58          |
| Form of Asset Swap Confirmation.....   | 82          |
| Form of Commodity Swap Confirmation .....  | 94          |
| Description of the Commodity Index .....   | 99          |
| Credit Support Terms Module.....   | 103         |
| Subscription and Sale .....  | 110         |
| Use of Proceeds.....   | 112         |
| Description of the Initial Asset Swap Charged Assets and the Issuers of the Initial Asset Swap<br>Charged Assets ..... | 113         |
| Description of the Counterparties and Commodity Swap Guarantor .....   | 115         |
| General Information .....  | 117         |

## **RISK FACTORS**

*The purchase of the Securities may involve substantial risks and is suitable only for sophisticated investors who have the knowledge and experience in financial and business matters necessary to enable them to evaluate the risks and the merits of an investment in the Securities.*

*The Issuer believes that the following factors may affect either its ability to fulfil its obligations under the Securities or the performance of the Securities. Some of these factors are contingencies which may or may not occur and the Issuer is not in a position to express a view on the likelihood of any such contingency occurring.*

*The Issuer believes that the factors described below represent the principal risks inherent in investing in the Securities, but the inability of the Issuer to pay interest, principal or other amounts on or in connection with the Securities may occur for other reasons and the Issuer does not represent that the statements below regarding the risks of holding the Securities are exhaustive. Prospective investors should also read the detailed information set out elsewhere in this Supplemental Information Memorandum and in the Information Memorandum and, in the light of their own financial circumstances and investment objectives, reach their own views prior to making any investment decision.*

### **Investor Suitability**

Prospective investors should reach an investment decision only after carefully considering the suitability of the Securities in light of their particular circumstances. Investment in the Securities may only be suitable for investors who:

- (a) have substantial knowledge and experience in financial and business matters and expertise in assessing credit risk which enables them to evaluate the merits and risks of an investment in the Securities and rights attaching to the Securities;
- (b) are capable of bearing the economic risk of an investment in the Securities for an indefinite period of time;
- (c) are acquiring the Securities as principal and not as agent for investment, and not with a view to resale, distribution or other disposition of the Securities (subject to (i) any applicable law requiring that the disposition of the investor's property be within its control and (ii) any allocation of the Securities within a Securityholder's books to the account of a client for whom such Securityholder exercises a discretionary client mandate); and
- (d) recognise that it may not be possible to make any transfer of the Securities for a substantial period of time, if at all.

Investment in the Securities involves substantial risks, including without limitation, principal, interest rate, commodity, currency, credit, political, liquidity and market risk and is not suitable for all investors. Investment in the Securities is suitable only for investors who can bear the financial and other risks associated with an investment in the Securities.

### **Credit Risk**

The ability of the Issuer to meet its obligations under the Securities will be dependent upon the payment of all sums due from the Counterparties under the Swap Agreements (as defined in the Issue Terms). The Commodity Swap Counterparty's payment obligations are guaranteed by the Commodity Swap Guarantor. However, in the event that (i) both the Commodity Swap Counterparty and the Commodity Swap Guarantor and/or (ii) the Asset Swap Counterparty default in their payment obligations under the respective Swap Agreements and Commodity Swap Guarantee (as applicable) (each as defined in the Issue Terms)

respectively, or a Swap Agreement otherwise terminates early, the Securities will be subject to early redemption. See "*Early Redemption of the Securities*" below.

The ability of the Issuer to meet its obligations under the Securities will also be dependent upon the Principal Paying Agent and the Custodian making the relevant payments when received and upon all parties to the Transaction Documents (other than the Issuer) performing their respective obligations thereunder. Accordingly, Securityholders are exposed, *inter alia*, to the creditworthiness of the Counterparties, the Commodity Swap Guarantor, the Principal Paying Agent and the Custodian.

#### **Asset Swap Counterparty's option to substitute the Asset Swap Charged Assets**

Securityholders should be aware that:

- (i) The Asset Swap Counterparty has the option, pursuant to the Asset Swap Agreement, to substitute the Asset Swap Charged Assets for Replacement Asset Swap Charged Assets, at any time. In so doing, the Asset Swap Counterparty is acting purely as a contractual counterparty, rather than as agent or fiduciary of the Issuer or of the Securityholders (see "*Asset Swap Counterparty - discretion*" below).
- (ii) The Asset Swap Counterparty's only obligation in exercising such option to substitute Asset Swap Charged Assets for Replacement Asset Swap Charged Assets, is to ensure that any Replacement Asset Swap Charged Assets satisfy the Eligibility Criteria on or about the date of the relevant Substitution and Replenishment Option Notice (or do not worsen any non-compliance (by the related Outgoing Asset Swap Charged Assets) with the Eligibility Criteria) and, subject to that, can act in its own interests in exercising such option. For the avoidance of doubt, there is no obligation on the Asset Swap Counterparty to substitute Asset Swap Charged Assets if such Asset Swap Charged Assets do not comply with the Eligibility Criteria after their initial compliance.
- (iii) The Asset Swap Counterparty is incentivised to select Replacement Asset Swap Charged Assets which maximise the benefit to the Asset Swap Counterparty by virtue of the increase in value to the Asset Swap Counterparty of the negative basis mark to market, being the difference between the market value of the Asset Swap Charged Assets and the market value of the Charged Asset Credit Risky Flows payable by the Issuer under the Asset Swap Transaction. The interest amounts payable to the Securityholders will not change as a result of any such substitution of Asset Swap Charged Assets. As a result of such change in value to the Asset Swap Counterparty of the negative basis mark to market (a) the amount of Eligible Credit Support to be transferred by the Asset Swap Counterparty to the Issuer pursuant to the Asset Swap CSA may decrease and/or the amount of Eligible Credit Support to be transferred by the Issuer to the Asset Swap Counterparty pursuant to the Asset Swap CSA may increase and (b) the amount payable to Securityholders on an early redemption of the Securities may decrease (see "*Early Redemption of the Securities*" below).
- (iv) Following from (i) to (iii) above, the market value of the Securities which may be realised upon an early redemption or other sale of the Securities, may be adversely affected by widening in the value of the negative basis mark to market of the Asset Swap Charged Assets, which may be exacerbated if the Asset Swap Counterparty exercises its substitution option under the Asset Swap Transaction to replace Asset Swap Charged Assets with Replacement Asset Swap Charged Assets that trade at a relatively wider negative basis at that time.

#### **Early Redemption of the Securities**

On an early redemption of the Securities, the Selling Agent or the Trustee, as applicable, will liquidate the Charged Assets in order to fund payment of amounts due to the Secured Parties. The amount payable to Securityholders will broadly be equal to (a) the proceeds of liquidation of the Charged Assets plus (b) the sum of the Termination Values in respect of each Swap Transaction. Securityholders are therefore exposed

to (i) the mark to market value of the negative basis related to the Asset Swap Charged Assets at that time (as described in "*Asset Swap Counterparty's option to substitute the Asset Swap Charged Assets*" above) and (ii) the credit risk of the Charged Assets (being the Asset Swap Charged Assets and the Eligible Credit Support), and may receive back less than their initial investment. See also "*Asset Swap Counterparty's option to substitute the Asset Swap Charged Assets*" above.

The value of the Securities upon an early redemption will depend on the value of the Charged Assets and each Swap Agreement and, consequently, changes in the creditworthiness (or perceived creditworthiness) of the Underlying Obligors, may affect the negative basis market value, which in turn will affect the value of the Securities. The Asset Swap Charged Assets (including any Replacement Asset Swap Charged Assets) sold to the Issuer may not be liquid assets and the Asset Swap Counterparty, in selecting Replacement Asset Swap Charged Assets upon exercise of its substitution option, may select assets which represent the most illiquid and price-volatile of the assets that satisfy the Eligibility Criteria at the relevant time.

Investors should further note that the Securities will redeem early if, amongst other things, either of the Counterparties is insolvent. Investors should read carefully "*Recharacterisation risk as a secured loan*" below.

### **Credit Support**

The Issuer may, in certain circumstances, upon a demand by the Asset Swap Counterparty and/or the Commodity Swap Counterparty, be required to transfer Asset Swap Charged Assets to the Counterparties on a weekly basis, as Eligible Credit Support in satisfaction of the Issuer's obligations pursuant to and in accordance with the Asset Swap CSA and/or the Commodity Swap CSA.

The substitution of Asset Swap Charged Assets is on a market value basis and therefore, following each substitution, the aggregate outstanding nominal amount of the Asset Swap Charged Assets may be less than the aggregate outstanding nominal amount of the Asset Swap Charged Assets immediately prior to such substitution, and less than the Aggregate Outstanding Principal Amount of the Securities. Therefore, exercise by the Asset Swap Counterparty of its option to substitute Asset Swap Charged Assets may have the effect of decreasing the nominal amount of Charged Assets collateralising the Securities. See "*Asset Swap Counterparty's option to substitute the Asset Swap Charged Assets*" above.

Securityholders should be aware that to the extent that the amount of Eligible Credit Support required to be transferred by the Issuer to the Counterparties pursuant to the Asset Swap CSA and/or the Commodity Swap CSA would decrease during the week following each Valuation Date (determined as if each day were a Valuation Date), the Issuer is taking unsecured credit exposure to the Counterparties for an amount equal to such decrease, in the period from and including the date of such change to the next following Valuation Date.

### **Asset Swap Counterparty - discretion**

The Asset Swap Counterparty is acting purely as a contractual counterparty, rather than as (i) a discretionary asset manager on behalf of the Issuer or of the Securityholders or (ii) a fiduciary of the Issuer or of the Securityholders. Investors should therefore be aware that the Asset Swap Counterparty is not under a duty to act in the best interests of the Issuer or of the Securityholders.

Securityholders should note that the Asset Swap Counterparty, both in (i) selecting the Initial Asset Swap Charged Assets to be sold to the Issuer on the Issue Date and (ii) exercising its option to substitute Asset Swap Charged Assets pursuant to the Asset Swap Transaction (see "*Asset Swap Counterparty's option to substitute the Asset Swap Charged Assets*" above), shall have regard, amongst other things, to any negative basis opportunities and is not obliged to consider the interests of the Issuer or the Securityholders.

## **Counterparties' assignment to affiliates**

Securityholders should be aware that in certain circumstances (as more fully set out in the Issue Terms) a Counterparty may transfer (without the consent of the Securityholders or any other party) its rights and obligations under a Swap Agreement to an affiliate thereof. As a consequence of any such transfer, the entities acting in the capacities of Calculation Agent and Swap Guarantor may change, and the Calculation Agent may make such changes to the Transaction Documents as are necessary to reflect such changes, without the consent of the Securityholders, the Trustee or any other party.

## **Commodity Risk**

Changes in the price of contracts on commodities referenced in the Underlying Indices will affect the closing price of such Underlying Indices, and consequently the closing price of the Commodity Index. This could (i) affect the value of the Securities and (ii) result in Securityholders receiving a lower than anticipated Final Redemption Amount, if the price of the Commodity Index does not move in the direction anticipated by the Securityholders.

## **Index Rebalancing Risk**

The commodities comprising the Underlying Indices may change substantially over the life of the Securities. In particular, it is possible that the initial constituent securities of the Underlying Indices will increase substantially in value prior to the Maturity Date but that the Underlying Indices will decline in value during such period. Potential Securityholders should be aware of this possibility when considering the importance of the identity of the initial constituent commodities comprising the Underlying Indices. In addition, potential Securityholders should note that the Index Sponsors or the Calculation Agent may in certain circumstances modify or change the methodology of the Commodity Index or the Underlying Indices prior to the Maturity Date and a change in the composition or discontinuance of an index could adversely affect the market value of Securities.

## **No Investigation**

No investigation or review of any of the commodities referenced in the Underlying Indices has been made by the Issuer or the Counterparties for the purposes of forming a view as to the merits of an investment linked to such commodities or the Commodity Index or the Underlying Indices, nor is any guarantee or express or implied warranty made as to the performance of such commodities, commodities referenced in either of the Underlying Indices or the Commodity Index itself.

## **Additional Risks in relation to Proprietary Indices**

The Commodity Index is a proprietary index of Merrill Lynch Pierce Fenner & Smith Limited (the **Index Publisher**) and will generally be developed, owned, calculated and maintained by the Index Publisher or an affiliate, which is responsible for the composition, calculation and maintenance of the Commodity Index. In such circumstances, the Index Publisher is under no obligation to take into account the interests of the Securityholders. The Index Publisher may make determinations that materially and adversely affect the value of the Securities.

## **Recharacterisation risk as a secured loan**

It is the intention of the Issuer and the Asset Swap Counterparty that (i) the purchase and sale of the Asset Swap Charged Assets (including Replacement Asset Swap Charged Assets and Outgoing Asset Swap Charged Assets) and (ii) the transfer of Eligible Credit Support pursuant to the Asset Swap CSA and the Commodity Swap CSA, be absolute and irrevocable and that they provide the purchaser or transferee (as applicable) with full legal and equitable title to the relevant assets, such that (where the purchaser or



transferee is the Issuer) the Asset Swap Charged Assets (if applicable) and Eligible Credit Support would not constitute property of a Counterparty in the event of such Counterparty's insolvency.

While the terms of the Asset Swap Agreement have been structured in a way that the sale of Asset Swap Charged Assets (including Replacement Asset Swap Charged Assets) should not be construed as the creation of a security interest in the Charged Assets, there is a risk that the purchase of the Asset Swap Charged Assets by the Issuer could be recharacterised by a court as a loan by the Issuer to the Asset Swap Counterparty against the granting of security by the Asset Swap Counterparty over the Asset Swap Charged Assets. If a court did recharacterise such sale as a secured loan then the ability of the Issuer to take action against the Asset Swap Counterparty in respect of such secured loan will be subject to applicable bankruptcy and other laws, including any administration or stay of actions of creditors under such laws. Furthermore, in some jurisdictions such secured loan may require registration or completion of other formalities in order to perfect such security interest. As a precautionary measure the Issuer therefore intends to file a UCC-1 financing statement in the District of Columbia and the State of North Carolina in order to perfect any security interest pursuant to the Uniform Commercial Code, deemed to be created.

### **Modifications to the terms of the Securities**

Prospective investors' attention is drawn to Condition 19 (*Meetings of Securityholders, Modification, Waiver and Substitution*) and in particular, the provision that the Trustee shall agree to make any modification (whether or not it may be materially prejudicial to the Securityholders) requested by the Dealer in respect of the Securities if, and to the extent that, such modification is to correct an error in the Issue Terms arising from a discrepancy between the Issue Terms and the final termsheet, as certified by the Dealer in form and content satisfactory to the Trustee.

### **UK Banking Act 2009**

The Banking Act 2009 (the **Banking Act**) received Royal Assent on 12th February, 2009 and came into effect on 21st February, 2009. The Banking Act includes (amongst other things) provision for a new special resolution regime which will extend, on a permanent basis, the range of tools available to UK authorities to deal with the failure (or likely failure) of a UK bank or building society (such as HSBC Bank PLC as Principal Paying Agent and Custodian). In particular, in respect of UK banks, such tools include share and property transfer powers (including powers for partial property transfers), certain ancillary powers (including powers to modify certain contractual arrangements in certain circumstances) and two new special insolvency procedures which may be commenced by UK authorities (i.e. bank insolvency and bank administration).

In general, the Banking Act requires the UK authorities to have regard to specified objectives in exercising the powers provided for by the Act. One of the objectives (which is required to be balanced as appropriate with the other specified objectives) refers to the protection and enhancement of the stability of the financial systems of the United Kingdom. The Banking Act includes provisions related to compensation in respect of transfer instruments and orders made under it.

If an instrument or order were to be made under the Banking Act in respect of HSBC Bank PLC, such instrument or order may (amongst other things) affect the ability of such entity to satisfy its obligations under the Transaction Documents and/or result in modifications to such documents.

The Banking Act 2009 (Restriction on Partial Property Transfers) (Amendment) Order 2009 (the **Safeguards Order**) came into force on 9 July 2009. The Safeguards Order imposes certain controls on the powers set out in the Banking Act and, *inter alia*, prevents the transfer under an instrument or order of some and not all of the property, rights and liabilities that comprise a "capital market arrangement" and also includes a restriction on the power to amend the terms of a trust if a partial property transfer is made pursuant to an instrument or order under the Banking Act. The issuance of the Securities by Xenon Capital Public Limited Company would constitute a "capital market arrangement" and therefore have the benefit of the Safeguards Order. However, Securityholders should note that such protections apply to partial property transfers only and not to all powers that can be carried out under an instrument or order.

At present, the UK authorities have not made an instrument or order under the Banking Act in respect of HSBC Bank PLC and there has been no indication that it will make any such instrument or order, but there can be no assurance that this will not change and/or that Securityholders will not be adversely affected by any such instrument or order if made.

### **Independent review and advice**

Each prospective purchaser of the Securities must make its own independent review (including as to the financial condition and affairs and its own appraisal of the creditworthiness) of the Issuer, the Counterparties, and the Commodity Swap Guarantor and the obligors in respect of the Charged Assets and obtain such professional advice (including, without limitation, tax, accounting, credit, legal and regulatory advice) as it deems appropriate under the circumstances, to assess the economic, social and political condition of each jurisdiction in which each such party is situated and to determine whether an investment in the Securities is appropriate in its particular circumstances.

In so doing, and without restricting the generality of the preceding paragraph, such prospective purchaser must determine that its acquisition and holding of the Securities (a) is fully consistent with its (or if it is acquiring the Securities in a fiduciary capacity, the beneficiary's) financial needs, objectives and condition, (b) complies and is fully consistent with all investment policies, guidelines and restrictions applicable to it (whether it is acquiring the Securities as principal or in a fiduciary capacity) and (c) is a fit, proper and suitable investment for it (or if it is acquiring the Securities in a fiduciary capacity, for the beneficiary), notwithstanding the clear and substantial risks inherent in investing in or holding the Securities. None of the Issuer, the Trustee, the Dealer, or any of their respective affiliates is acting as an investment adviser, or assumes any fiduciary obligation, to any purchaser of Securities.

Neither the Information Memorandum nor this Supplemental Information Memorandum is intended to provide the basis of any credit or other evaluation or should be considered as a recommendation or constituting an invitation or offer that any recipient of the Information Memorandum or this Supplemental Information Memorandum should purchase any of the Securities. The Trustee and the Dealer expressly do not undertake to review the financial condition or affairs of the Issuer, the Counterparties, or the Commodity Swap Guarantor or the obligors in respect of the Charged Assets.

### **Limited recourse**

Claims against the Issuer by the Securityholders of the Series and by the Counterparties will be limited to the Mortgaged Property relating to such Series. The proceeds of realisation of such Mortgaged Property may be less than the sums due to the Securityholders and the Counterparties. Any shortfall will be borne by the Securityholders and by the Counterparties in accordance with the Security Ranking Basis. In this respect, each prospective investor should note that the claims of the Counterparties in respect of amounts owing to them under the Swap Agreements shall rank in priority to the claims of Securityholders under the Securities. Each Securityholder, by subscribing for or purchasing the Securities, will be deemed to accept and acknowledge that it is fully aware that, in the event of a shortfall: (a) the Issuer shall be under no obligation to pay, and the other assets (if any) of the Issuer including, in particular, assets securing other Series of securities or Alternative Investments will not be available for payment of, such shortfall, (b) all claims in respect of such shortfall shall be extinguished and (c) the Trustee, the Securityholders and the Counterparties shall have no further claim against the Issuer in respect of such unpaid amounts and will accordingly not be able to petition for the winding up of the Issuer as a consequence of such shortfall.

The Securities are direct, limited recourse obligations of the Issuer alone and not of the officers, members, directors, employees, securityholders or incorporator of the Issuer, the Trustee, the Counterparties, the Commodity Swap Guarantor or the obligors in respect of the Charged Assets or their respective successors or assigns. Furthermore, they are not obligations of, or guaranteed in any way by, the Dealer. Potential investors should also consider carefully "*Early Redemption of the Securities*" and "*Recharacterisation as a secured loan risk*" above.

## **No secondary market**

Neither the Issuer, the Trustee, the Agents, the Dealer nor any of their respective affiliates is under an obligation to provide liquidity for the Securities and no secondary market is expected to develop in respect of the Securities. Whilst the Securities may be listed or admitted to trading on the Irish Stock Exchange, the Issuer does not expect a trading market for the Securities to develop. In the unlikely event that a secondary market does develop, there can be no assurance that it will provide the Securityholders with liquidity of investment or that it will continue for the life of the Securities. Accordingly, the purchase of the Securities is suitable only for purchasers who can bear the risks associated with a lack of liquidity in the Securities and the financial and other risks associated with an investment in the Securities. Purchasers must be prepared to hold the Securities for an indefinite period of time or until final redemption or maturity of the Securities.

## **Business relationships**

Each of the Issuer, the Dealer, the Trustee, the Agents or any of their respective affiliates may have existing or future business relationships with the Counterparties, the Commodity Swap Guarantor or any obligor in respect of the Charged Assets (including, but not limited to, lending, depository, risk management, advisory and banking relationships), and will pursue actions and take steps that they deem or it deems necessary or appropriate to protect their or its interests arising therefrom without regard to the consequences for a Securityholder. Furthermore, the Dealer, the Trustee, the Agents or any of their respective affiliates may buy, sell or hold positions in obligations of, or act as investment or commercial bankers, advisers or fiduciaries to, or hold directorship and officer positions in, any obligor in respect of the Charged Assets.

## **General Conflicts of Interest**

Each of the Counterparties and any of their respective affiliates is acting or may act in a number of capacities in connection with the issue of Securities. The Counterparties and any of their respective affiliates acting in such capacities in connection with the issue of Securities shall only have the duties and responsibilities expressly agreed to by it in the relevant capacity and shall not, by virtue of its or any other affiliates acting in any other capacity, be deemed to have other duties or responsibilities or be deemed to hold a standard of care other than as expressly provided with respect to each such capacity. Each of the Counterparties and any of their respective affiliates in their respective various capacities in connection with the Securities may enter business dealings, including the acquisition of investment securities as contemplated by the Transaction Documents from which it may derive revenues and profits in addition to any fees stated in various documents, without any duty to account therefor, provided that any such revenue, profits or fees will be paid or received only in accordance with applicable regulations. Potential investors should also consider carefully "*Asset Swap Counterparty - discretion*" above.

Various potential and actual conflicts of interest may arise between the interests of the Securityholders and either the Issuer and/or the Counterparties, as a result of the various businesses, management, investment and other activities of such persons, and none of such persons is required to resolve such conflicts of interest in favour of the Securityholders. The following briefly summarises some of those conflicts, but is not intended to be an exhaustive list of all such conflicts. The Counterparties shall manage conflicts of interest in accordance with their respective conflicts of interest policy.

Such persons may (a) deal in the Charged Assets, or securities or obligations of the issuer of the Charged Assets, (b) enter into credit derivatives involving reference entities that may include the Charged Assets (including credit derivatives to hedge its obligations under the Asset Swap Agreement), (c) advise and distribute securities on behalf of, arrange or manage transactions on behalf of, accept deposits from, make loans or otherwise extend credit to and generally engage in any kind of commercial or investment banking or other business with, any obligor in respect of the Charged Assets and (d) act with respect to such business in the same manner as if the Securities did not exist, regardless of whether any such relationship or action might have an adverse effect on the, the Charged Assets, the Securities, or on the position of any other party to the transaction described herein or otherwise.

## **No Obligations owing by the Calculation Agent**

The Calculation Agent shall have no obligations to the Securityholders, and shall only have the obligations expressed to be binding on it pursuant to the Agency Agreement and the Issue Terms. All designations and calculations made by the Calculation Agent shall be conclusive and binding on the Securityholders.

Securityholders should be aware that where any right or obligation of the Calculation Agent is not specified to be exercised or performed within a specific timeframe, a failure or delay by the Calculation Agent in exercising such right or performing such obligation will not be presumed to operate as a waiver and will not be presumed to preclude any subsequent or further exercise or performance by the Calculation Agent. Merrill Lynch International is Calculation Agent in respect of the Commodity Swap Agreement. Bank of America, National Association is Calculation Agent in respect of the Securities and Calculation Agent in respect of the Asset Swap Agreement. Securityholders should be aware that the Calculation Agent may at any time assign or transfer its rights, obligations or duties under the Agency Agreement to Bank of America, National Association or any of its affiliates. As a result potential and actual conflicts of interest may arise between the interests of the Securityholders and either the Issuer and/or the Counterparties, or their affiliates.

## **Taxation**

Each Securityholder will assume and be solely responsible for any and all taxes of any jurisdiction or governmental or regulatory authority, including, without limitation, any state or local taxes or other like assessment or charges that may be applicable to any payment to it in respect of the Securities. The Issuer will not be obliged to pay any additional amounts to Securityholders to reimburse them for any tax, assessment or charge required to be withheld or deducted from payments in respect of the Securities by the Issuer or the Principal Paying Agent except as provided for in the Issue Terms. In addition, to the extent that the Issuer suffers any tax in respect of its income from the Charged Assets or payments under a Charged Agreement (including the deduction of tax from such payments) so that it would be unable to make payment of the full amount payable on the Securities without recourse to further sources of income, the Securities may be redeemed early and Securityholders may not recover all amounts invested in the Securities. The attention of each prospective purchaser is drawn to the section entitled "*Taxation*" in the Information Memorandum. None of the Issuer, the Dealer or any of their respective affiliates makes any representation nor has given to any potential purchaser and nor will give any advice concerning the appropriate accounting treatment or possible tax consequences of purchasing the Securities.

## **Provision of information**

None of the Issuer, the Trustee, the Agents, the Dealer nor any of their respective affiliates makes any representation as to the credit quality of the Counterparties, the Commodity Swap Guarantor or any obligor in respect of the Charged Assets. Any of such persons may have acquired, or during the term of the Securities may acquire, non-public information with respect to the Counterparties, the Commodity Swap Guarantor or any obligor in respect of the Charged Assets. None of such persons is under any obligation (i) to review on the Securityholders' behalf, the business, financial conditions, prospects, creditworthiness or status of affairs of any obligor in respect of the Charged Assets or conduct any investigation or due diligence into any such issuer in respect of the Charged Assets or (ii) other than as may be required by applicable rules and regulations relating to the Securities to make available (a) any information relating to the Securities or (b) any non-public information they may possess in respect of the Counterparties, the Commodity Swap Guarantor or any obligor in respect of the Charged Assets.

## **Legal opinions**

Legal opinions relating to the Securities will be obtained on issue with respect to the laws of England and of Ireland but no such opinions will be obtained with respect to any other applicable laws and no investigations will be made into the validity or enforceability of the laws of any other jurisdiction in respect of the obligations under the Securities. Any such legal opinions will not be addressed to, and may not be relied on by, Securityholders. In particular, save as aforesaid, no legal opinions will be obtained in relation to:

- (a) the laws of the country of incorporation of any issuer of the Charged Assets;
- (b) the laws of any country in which any of the Charged Assets are situated; or
- (c) the laws of any country which are expressed to govern any of the Charged Assets.

Such laws depending upon the circumstances, may affect, among other things, the validity and legal and binding effect of the Charged Assets and the effectiveness and ranking of the security for the Securities. Consequently, no responsibility is accepted by the Issuer in relation to such matters.

### **Legality of purchase**

None of the Issuer, the Dealer or any of their respective affiliates has or assumes responsibility for the lawfulness of the acquisition of the Securities by a prospective purchaser of the Securities, whether under the laws of the jurisdiction of its incorporation or the jurisdiction in which it operates (if different), or for compliance by that prospective purchaser with any law, regulation or regulatory policy applicable to it.

### **Centre of Main Interests**

The Issuer has its registered office in Ireland. As a result there is a rebuttable presumption that its centre of main interests (**COMI**) is in Ireland and consequently that any main insolvency proceedings applicable to it would be governed by Irish law. In the decision by the European Court of Justice (**ECJ**) in relation to Eurofood IFSC Limited, the ECJ restated the presumption in Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings, that the place of a company's registered office is presumed to be the company's COMI and stated that the presumption can only be rebutted if "factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exists which is different from that which locating it at the registered office is deemed to reflect". As the Issuer has its registered office in Ireland, has Irish directors, is registered for tax in Ireland and has an Irish corporate services provider, the Issuer does not believe that factors exist that would rebut this presumption, although this would ultimately be a matter for the relevant court to decide, based on the circumstances existing at the time when it was asked to make that decision. If the Issuer's COMI is not located in Ireland, and is held to be in a different jurisdiction within the European Union, Irish Insolvency proceedings would not be applicable to the Issuer.

### **Preferred Creditors**

If the Issuer becomes subject to an insolvency proceeding and the Issuer has obligations to creditors that are treated under Irish law as creditors that are senior relative to the Securityholders, the Securityholders may suffer losses as a result of their subordinated status during such insolvency proceedings. In particular:

- (a) under the terms of the Trust Instrument, the Issuer will assign by way of security to the Trustee on behalf of Securityholders by way of fixed first ranking security interest (the **Security Interest**) as security for, amongst other things, its payment obligations in respect of the Securities, certain rights under the Charged Agreements and to the Charged Assets. Under Irish law, the claims of creditors holding fixed security interests may rank behind other claims (namely fees, costs and expenses of any examiner appointed and certain capital gains tax liabilities) and, in the case of fixed security interests over book debts, may rank behind claims of the Irish Revenue Commissioners for PAYE and VAT;
- (b) under Irish law, for a charge to be characterised as a fixed security interest, the holder of the charge or assignment is required to exercise the requisite level of control over the assets purported to be secured and the proceeds of such assets including any bank account into which such proceeds are paid. There is a risk therefore that even a security interest which purports to be taken as a fixed security interest, such as the Security Interest, may take effect as a floating charge if a court deems that the requisite level of control was not exercised; and

- (c) in an insolvency of the Issuer, the claims of certain other creditors (including the Irish Revenue Commissioners for certain unpaid taxes), as well as those of creditors mentioned above, will rank in priority to claims of unsecured creditors and claims of creditors holding floating charges.

### **Examinership**

Examinership is a court procedure available under the Irish Companies (Amendment) Act 1990, as amended (the **1990 Act**) to facilitate the survival of Irish companies in financial difficulties. An examiner may be appointed to a company whose COMI is in Ireland in circumstances where it is unable, or likely to be unable, to pay its debts.

The Issuer, the directors of the Issuer, a contingent, prospective or actual creditor of the Issuer, or shareholders of the Issuer holding, at the date of presentation of the petition, not less than one-tenth of the voting share capital of the Issuer are each entitled to petition the court for the appointment of an examiner. The examiner, once appointed, has the power to halt, prevent or rectify acts or omissions, by or on behalf of the company after his appointment and, in certain circumstances, negative pledges given by the company prior to his appointment will not be binding on the company. Furthermore, where proposals for a scheme of arrangement are to be formulated, the company may, subject to the approval of the court, affirm or repudiate any contract under which some element of performance other than the payment remains to be rendered both by the company and the other contracting party or parties.

During the period of protection, the examiner will compile proposals for a compromise or scheme of arrangement to assist in the survival of the company and the whole or any part of its undertaking as a going concern. A scheme of arrangement may be approved by the Irish High Court when a minimum of one class of creditors, whose interests are impaired under the proposals, has voted in favour of the proposals and the Irish High Court is satisfied that such proposals are fair and equitable in relation to any class of members or creditors who have not accepted the proposals and whose interests would be impaired by implementation of the scheme of arrangement and the proposals are not unfairly prejudicial to any interested party.

The fact that the Issuer is a special purpose entity and that all its liabilities are of a limited recourse nature means that it is unlikely that an examiner would be appointed to the Issuer.

If however, for any reason, an examiner were appointed while any amounts due by the Issuer under the Securities were unpaid, the primary risks to the holders of Securities would be as follows:

- (a) the Trustee, acting on behalf of Securityholders, would not be able to enforce rights against the Issuer during the period of examinership; and
- (b) a scheme of arrangement may be approved involving the writing down of the debt due by the Issuer to the Securityholders irrespective of the Securityholders' views.

### **Commingling of Charged Assets**

Prospective investors' attention is drawn to the provisions in the Agency Agreement allowing the Charged Assets held by the Custodian to be commingled with Custodian's own assets in certain limited circumstances and, in such circumstances, in the event of the Custodian's insolvency, the Issuer's assets may not be as well protected from claims made on behalf of the general creditors of the Custodian.

### **Currency Risk**

An investment in Securities denominated or payable in a currency other than the currency of the jurisdiction of a particular purchaser (the **Purchaser's Currency**), entails significant risks that are not associated with a similar investment in a security denominated and/or payable in the Purchaser's Currency. These risks include, but are not limited to:

- (a) the possibility of significant market changes in rates of exchange between the Purchaser's Currency and the currency in which the Securities are denominated and/or payable;
- (b) the possibility of significant changes in rates of exchange between the Purchaser's Currency and the currency in which the Securities are denominated and/or payable resulting from the official redenomination or revaluation of the currency; and
- (c) the possibility of the imposition or modification of foreign exchange controls by either the jurisdiction of the purchaser or foreign governments.

### **Current Market Conditions**

The current liquidity shortage and volatility in the credit markets has introduced a variety of increased risks relating to several aspects of the Issuer's operations. Such additional risks include the inability of the Issuer to sell its assets which, among other things, may render it unable to dispose of underperforming or defaulted assets. Such market conditions may also lead to the inability of the Issuer to determine a reliable valuation of its assets. All of such factors could materially adversely affect the interests of Securityholders.

### **Comparative Returns**

Risk-adjusted returns and absolute returns on the Securities may be lower than that of comparable investments. Each prospective purchaser should be aware that any return on the Securities may not exceed or even equal the return that might have been achieved had the amount of its initial investment been placed on deposit for the same period. In the event of an early redemption of the Securities, Securityholders may not recover the amount of their investment. See "Early Redemption of the Securities" above.

### **Non-U.S. Investors**

The Securities will not be registered with the U.S. Securities and Exchange Commission under the Securities Act of 1933, as amended (the **1933 Act**), the Issuer will not be registered under the Investment Company Act of 1940, as amended (the **1940 Act**) or under any state or foreign securities laws and the Securities will be offered and sold only to non-US persons who purchase the Securities outside the United States of America pursuant to Regulation S of the 1933 Act. The offer and sale of offered Securities or the transactions contemplated herein may be further restricted by law. Potential purchasers are required to inform themselves of and to observe any legal restrictions on their involvement in the transaction.

### **Trustee Indemnity**

Upon the occurrence of an Event of Default in relation to the Securities, Securityholders may be required to provide an indemnity to the Trustee to its satisfaction as provided for in Condition 11 (*Events of Default*) before the Trustee gives notice to the Issuer accelerating the Securities. The Trustee shall not be obliged to take any action if not indemnified to its satisfaction.

**Terms of Series 224 EUR 17,500,000 Limited Recourse Floating Rate Commodity Index-Linked Secured Notes due 2016 are set out in the Issue Terms below.**

## **ISSUE TERMS**

The Securities have the **Terms** as set out in these Issue Terms, which will complete and modify the Bearer Securities Base Conditions Module, July 2009 Edition (the **Bearer Securities Base Conditions Module**) and the General Definitions Module, March 2010 Edition (the **General Definitions Module**), each of which is incorporated by reference into these Issue Terms (together, the **Conditions**). The Bearer Securities Base Conditions Module and the General Definitions Module are each set out in full in the Supplemental Information Memorandum relating to the Securities.

1. Issuer: Xenon Capital Public Limited Company.
2. Description of Securities: Series 224 EUR 17,500,000 Limited Recourse Floating Rate Commodity Index-Linked Secured Notes due 2016.
3. (a) Issue Date: 23 March 2011.  
(b) Issue Price: 100 per cent. of the Aggregate Outstanding Principal Amount.
4. Status of the Securities: The Securities will constitute direct, secured, limited recourse obligations of the Issuer and will, save for such exceptions as may be provided by applicable legislation or judicial order, rank *pari passu* and without preference among themselves.
5. Date of corporate authorisation for issuance of Securities: 22 March 2011.

## **INTEREST**

6. The Securities are Floating Rate Securities which pay interest at the Rate of Interest determined pursuant to paragraph 6(e) below on their Outstanding Principal Amount on the Specified Interest Payment Dates set out below. Condition 7(b)(iv) (*Determination of Rate of Interest and Interest Amounts*) shall be amended by the deletion of the words "(C) the applicable Day Count Fraction" and their replacement with the words "(C) the product of (x) the applicable Day Count Fraction and (y) the Participation Ratio".
  - (a) Interest Rate Basis: Floating Rate.
  - (b) Specified Interest Payment Dates: 28 February, 30 May, 30 August and 30 November in each year, commencing 30 May 2011 (a short first coupon) up to (and including) the Maturity Date, subject to adjustment in accordance with the Business Day Convention, for the purposes of payment and accrual.
  - (c) Interest Commencement Date: The Issue Date.
  - (d) Business Day Convention: Modified Following Business Day Convention.



- (e) Manner in which Rate of Interest is to be determined: ISDA Determination shall be applicable and the Rate of Interest shall be determined in the manner set out in Condition 7(b)(ii)(A) (*Rate of Interest*) on the basis of the following:
- (A) Floating Rate Option: EUR-EURIBOR-Reuters.
  - (B) Designated Maturity: 3 months (except that the Designated Maturity in respect of the initial Interest Period shall be the Linear Interpolation (as defined in the 2006 ISDA Definitions) of two months and three months).
  - (C) Margin: zero per cent.
- (f) Additional Business Centre(s): Not applicable.
- (g) Day Count Fraction: Act/360.
- (h) Participation Ratio: 70 per cent.

#### PROVISIONS RELATING TO REDEMPTION

7. (a) Maturity Date: 30 November 2016 subject to adjustment in accordance with the Modified Following Business Day Convention for the purposes of payment and accrual.
- (b) Final Redemption Amount: In respect of a Security, the Outstanding Principal Amount of such Security x [100% + max[Performance; 0]].
- (c) Performance:  $\frac{MLCXADLS_{Final}}{MLCXADLS_{Initial}} - 110\%$ ; expressed as a percentage.
- (d)  $MLCXADLS_{Final}$ : The Commodity Reference Price on the Pricing Date.
- (e)  $MLCXADLS_{Initial}$ : 206.262631, being the Commodity Reference Price on the Strike Date.

#### PROVISIONS RELATING TO SECURITY

8. Initial Asset Swap Charged Assets: Each of the securities listed in the Annex to these Issue Terms.
9. Substitution of Asset Swap Charged Assets:
- (a) At the direction of the Counterparty pursuant to Condition 4(b)(i) (*Substitution at direction of* Applicable, subject to paragraph 34(ii) below.

*Counterparty):*

- (b) At the direction of the Securityholders pursuant to Condition 4(b)(ii) (*Substitution at the request of Securityholders*): Not applicable.
- (c) Substitution with Cash Collateral pursuant to Condition 4(b)(iii) (*Substitution with Cash Collateral*): Not applicable.

10. Charged Agreements:

- (a) Asset Swap Counterparty: Bank of America, National Association of 101 S. Tryon Street, Charlotte, NC 28255, USA.
- (b) Commodity Swap Counterparty: Merrill Lynch International of Merrill Lynch Financial Centre, 2 King Edward Street, London EC1A 1HQ.
- (c) Asset Swap Agreement: A 1992 ISDA Master Agreement (Multicurrency – Cross Border) and Schedule thereto (in the form of the Swap Schedule Terms Module, March 2010 Edition) dated as of 23 March 2011, as supplemented by (i) a confirmation (comprising an asset swap transaction (the **Asset Swap Transaction**) and (ii) a 1995 ISDA Credit Support Annex (in the form of the Credit Support Terms Module, March 2011 Edition), and dated 23 March 2011 (the **Asset Swap CSA**) and each between the Issuer and the Asset Swap Counterparty (together, the **Asset Swap Agreement**). The Asset Swap Counterparty may, from time to time, transfer Eligible Credit Support (as defined in the Asset Swap Agreement) to the Issuer (to the CSA Custodian Account) and the Issuer may, from time to time, transfer Eligible Credit Support from the CSA Custodian Account and/or the Custodian Account to the Asset Swap Counterparty (and the Trustee shall accordingly release the relevant Charged Assets from the Security Interests in accordance with the Trust Instrument), in each case pursuant to and in accordance with the Asset Swap CSA (see "*Credit Support Terms Module*").
- (d) Commodity Swap Agreement: A 1992 ISDA Master Agreement (Multicurrency – Cross Border) and Schedule thereto (in the form of the Swap Schedule Terms Module, March 2010 Edition) dated as of 23 March 2011, as supplemented by (i) a confirmation (comprising a commodity swap transaction (the **Commodity Swap Transaction**) and (ii) a 1995 ISDA Credit Support Annex (in the form of the Credit Support Terms Module, March 2011 Edition), and dated 23 March 2011 (the **Commodity Swap CSA**) and each

between the Issuer and the Commodity Swap Counterparty (together, the **Commodity Swap Agreement**). The Commodity Swap Counterparty may, from time to time, transfer Eligible Credit Support (as defined in the Commodity Swap Agreement) to the Issuer (to the CSA Custodian Account) and the Issuer may, from time to time, transfer Eligible Credit Support from the CSA Custodian Account and/or the Custodian Account to the Commodity Swap Counterparty (and the Trustee shall accordingly release the relevant Charged Assets from the Security Interests in accordance with the Trust Instrument), in each case pursuant to and in accordance with the Commodity Swap CSA (see "*Credit Support Terms Module*").

- (e) Counterparties' rights to assign and/or to delegate its rights and obligations under the Swap Agreements:

If a Counterparty (a) becomes or may become subject to any legal or regulatory restrictions or requirements (including but not limited to increased capital costs and/or margining requirements) or (b) undertakes an internal reorganisation of its business affecting the identity of the booking entity used for the line of swaps business which would include the Asset Swap Transaction or the Commodity Swap Transaction (as applicable), that, in each case, would either prevent the same from acting as Counterparty and/or increase its operating or administrative burden (or, in the case of (b) above, would, if a transfer was implemented, result in increased operating or administrative efficiencies or cost savings for the Counterparty), such Counterparty may transfer (without the consent of the Securityholders or any other party) its rights and obligations to an affiliate thereof. As a consequence of any such transfer, the entities acting in the capacities of Calculation Agent and Swap Guarantor may change, and the Calculation Agent may make such changes to the Transaction Documents as are necessary to reflect such changes, without the consent of the Securityholders, the Trustee or any other party.
  - (f) Commodity Swap Guarantor: Merrill Lynch & Co., Inc.
  - (g) Commodity Swap Guarantee: The Commodity Swap Agreement is unconditionally and irrevocably guaranteed by the Commodity Swap Guarantor.
11. (a) Security Ranking Basis: Counterparty Priority Basis, which means that (notwithstanding the definition thereof in the General Definitions Module) the net proceeds of realisation of, or enforcement with respect to, the security constituted by the Trust Instrument (following payment of all amounts due to the Trustee in accordance with the Trust Instrument) shall be

applied:

- (i) *first, pro rata and pari passu* in meeting the claims of the Counterparties; and
- (ii) *thereafter, pro rata and pari passu* in meeting the claims of the Securityholders.

(b) Instructing Creditor:

For the purposes of these Securities only, the Instructing Creditor shall be the Asset Swap Counterparty.

12. Custodian's account details:

- (a) Account No. 725309 linked to Euroclear Account No. 27559 or such other account as may be advised by the Custodian from time to time (the **Custodian Account**).
- (b) Account No. 725632 linked to Euroclear Account No. 27559 or such other account as may be advised by the Custodian from time to time (the **CSA Custodian Account**).

13. Counterparties' Accounts details:

As set out in the Charged Agreements.

14. Additional Charging Document:

Not applicable.

#### GENERAL PROVISIONS APPLICABLE TO THE SECURITIES

15. New Global Note:

Yes.

16. Pre-closing Date and Time:

Not applicable.

17. Closing Date and Time:

2.00 p.m. (London time) on 23 March 2011.

18. Form of Securities:

Securities in bearer form to be represented on issue by a Temporary Bearer Global Security.

The Temporary Bearer Global Security is exchangeable for a Permanent Bearer Global Security, which is exchangeable for Bearer Securities in definitive form only upon an Exchange Event.

19. Whether TEFRA D or TEFRA C rules applicable or TEFRA rules not applicable:

TEFRA D.

20. Currency of Issue:

Euro (**EUR**).

21. Specified Denominations:

EUR 100,000.

22. Whether the Issuer is able to purchase any of the Securities pursuant to Condition 9 (*Purchase*):

Yes.

23. Rating:

The Securities will not be rated.

24. Listing: Application has been made to the Irish Stock Exchange for the Securities to be admitted to the Official List and trading on its regulated market. There can be no assurance that any such admission to trading will be obtained.
25. Common Code and ISIN: 059835432 and XS0598354321, respectively.
26. Intended to be held in a manner which would allow Eurosystem eligibility: Yes.  
Note that the designation "yes" simply means that the Securities are intended to be deposited with one of the ICSDs as common safekeeper and does not necessarily mean that the Securities will be recognised as eligible collateral for European monetary policy and intraday credit operations by the Eurosystems either upon issue or at any or all times during their life. Such recognition will depend upon satisfaction of the Eurosystems eligibility criteria.
27. Common Safekeeper: ICSD Safekeeper.

#### **AGENTS AND OTHER PARTIES**

28. Party and specified office:
- (a) Trustee: HSBC Corporate Trustee Company (UK) Limited of Level 24, 8 Canada Square, London E14 5HQ.
  - (b) Principal Paying Agent: HSBC Bank plc of 8 Canada Square, London E14 5HQ.
  - (c) Custodian: HSBC Bank plc of 8 Canada Square, London E14 5HQ.
  - (d) Calculation Agent and Agent Bank: Bank of America, National Association of 101 S. Tryon Street, Charlotte, NC 28255, USA.
  - (e) Selling Agent: Bank of America, National Association of 101 S. Tryon Street, Charlotte, NC 28255, USA.
  - (f) Issuer's Process Agent: Merrill Lynch International of 2 King Edward Street, London EC1A 1HQ.
  - (g) Vendor: Bank of America, National Association of 101 S. Tryon Street, Charlotte, NC 28255, USA.
  - (h) Irish Listing Agent: Arthur Cox Listing Services Limited of Earlsfort Centre, Earlsfort Terrace, Dublin 2, Ireland.
  - (i) Dealer: Merrill Lynch International of 2 King Edward Street, London EC1A 1HQ.
29. Upfront Fee: On the Issue Date a one off fee of up to 3.4 per cent.

of the Aggregate Outstanding Principal Amount of the Securities will be payable by or on behalf of Bank of America, National Association to Valeur Pte Ltd. in its capacity as principal in the ordinary course of its business as a discretionary asset manager.

## **ADDITIONAL TERMS**

The following additional terms shall be deemed to be added to the Conditions. To the extent that the Conditions are inconsistent with these additional terms, such Conditions shall not apply.

### **30. Adjustments to the Commodity Index**

- (a) If on or prior to the Pricing Date:
  - (i) the Index Sponsor makes a material change in the formula for or the method of calculating the Commodity Index or an Underlying Index or in any other way materially modifies the Commodity Index or Underlying Index, as applicable, (other than a modification prescribed in that formula or method to maintain that Commodity Index or Underlying Index, as applicable, in the event of changes in constituent commodities and weightings and other routine events, as determined by the Calculation Agent in its sole discretion);
  - (ii) the Index Sponsor permanently cancels the Commodity Index or an Underlying Index; or
  - (iii) the Index Sponsor fails to calculate and announce the Commodity Index or an Underlying Index and there is no Successor Index Sponsor or Successor Index (as determined by the Calculation Agent in its sole discretion),

then the Calculation Agent may at its option (in the case of the event set out in sub-paragraph (i) above) and shall (in the case of the events set out in sub-paragraph (ii) and (iii) above) (such events set out in sub-paragraphs (i), (ii) and (iii) above, the **Index Adjustment Events**) (provided that the Calculation Agent may, in its sole and absolute discretion, determine that the event set out in sub-paragraph (iii) shall instead constitute a Market Disruption Event in respect of the Commodity Index or Underlying Index, as applicable) calculate the Commodity Reference Price using in lieu of the published level for the Commodity Index or Underlying Index, as applicable, the level for the Commodity Index or Underlying Index, as applicable, as at the relevant determination date as determined by the Calculation Agent in accordance with the formula for and method of calculating that Commodity Index or Underlying Index, as applicable, last in effect prior to the relevant Index Adjustment Event, but, in respect of an Underlying Index, using only those futures contracts that comprised that Underlying Index immediately prior to the relevant Index Adjustment Event (other than those futures contracts that have ceased to be listed on any relevant exchange).

- (b) If the Commodity Index or an Underlying Index is (i) not calculated and announced by the Index Sponsor but is calculated and announced by a successor sponsor (the **Successor Index Sponsor**) acceptable to the Calculation Agent, or (ii) replaced by a successor index using, in the determination of the Calculation Agent, the same or a substantially similar formula for and method of calculation as used in the calculation of that Commodity Index or Underlying Index, as applicable, then in each case that index (the **Successor Index**) will be deemed to be the Commodity Index or Underlying Index, as applicable.

### **31. Disruption Fallback**

If the Calculation Agent determines, in its sole and absolute discretion, that a Market Disruption Event has occurred and is continuing on the Pricing Date, the Calculation Agent shall determine the Specified Price using:

- (A) with respect to each futures contract included in an Underlying Index which is not affected by the Market Disruption Event, the closing prices of each such futures contract on the Pricing Date;
- (B) with respect to each futures contract included in an Underlying Index which is affected by the Market Disruption Event, but for which a Market Disruption Event ceased to exist on or prior to the Commodity Index Cut-Off Date, the closing prices of each such futures contract on the first day following the applicable determination date on which no Market Disruption Event is occurring with respect to such contract; and
- (C) with respect to each futures contract included in an Underlying Index which is affected by the Market Disruption Event, where a Market Disruption Event continues to exist as of the Commodity Index Cut-Off Date, the Calculation Agent's good faith estimate of the closing price of each such futures contract on the Commodity Index Cut-Off Date.

In calculating the Specified Price as set out above, the Calculation Agent shall use the formula for calculating the relevant index price last in effect prior to the Market Disruption Event.

### **32. Correction to Published Prices**

For the purposes of determining or calculating the Specified Price, if the price published or announced on a given day and used or to be used by the Calculation Agent to determine the Final Redemption Amount is subsequently corrected and such correction is published or announced by the person responsible for that publication or announcement on or prior to the second Business Day preceding the Maturity Date, the Calculation Agent may, in its sole and absolute discretion, use such corrected price in such calculation of the Final Redemption Amount.

### **33. Additional Early Redemption Events**

Upon the occurrence of an Additional Disruption Event:

- (i) the Calculation Agent in its sole and absolute discretion may either:
  - (a) determine in its sole and absolute discretion the appropriate adjustment, if any, to be made to the Final Redemption Amount and/or any of the other terms of the Conditions to account for such Additional Disruption Event and determine the effective date of that adjustment (without the consent of the Issuer, the Securityholders or any other party); or
  - (b) instruct the Issuer (with a copy to the Trustee, Principal Paying Agent and the Selling Agent) to redeem all, but not some only, of the Securities. Thereupon, the Selling Agent shall arrange for, and administer the sale of, all of the Charged Assets in accordance with the Agency Agreement, in which case, upon sale of all of the Charged Assets and receipt of the Realisation Amount, the Issuer shall give notice as soon as reasonably practicable to the Trustee, Principal Paying Agent and the Securityholders (which notice shall be irrevocable) of the date on which the Securities will be redeemed at the Early Redemption Amount and the Charged Agreements will be terminated and on such date the Issuer shall redeem each Security at the Early Redemption Amount; and

- (ii) the Calculation Agent shall notify the Issuer and the Issuer shall give notice as soon as practicable to the Securityholders in accordance with Condition 15 (*Notices*), as applicable, stating the occurrence of the Additional Disruption Event, giving details thereof and the action (if any) proposed to be taken in relation thereto.

#### 34. Amendments to the Conditions

- (i) Condition 8(c)(i)(A), 8(c)(i)(C) and 8(c)(i)(D) (*Following Default under the Charged Assets or termination of a Charged Agreement*) shall not apply. Condition 8(c)(ii) (*Following Early Redemption of the Charged Assets*) shall not apply. References in the Conditions to "the Counterparty" shall be deemed to mean "each Counterparty".
- (ii) Condition 4(b)(i) (*Substitution at direction of Counterparty*) shall be deleted and replaced with the following:

"(i) **Substitution at direction of Counterparty**

The Asset Swap Charged Assets may (or (a) following a redemption of an Asset Swap Charged Asset in whole or in part or (b) if an Asset Swap Charged Asset becomes a Defaulted Charged Asset, shall) be substituted from time to time for Replacement Asset Swap Charged Assets (as defined in the Asset Swap Agreement), pursuant to and in accordance with the terms of the Asset Swap Agreement. Where the Asset Swap Counterparty delivers a Substitution and Replenishment Option Notice (as defined in the Asset Swap Agreement) that is effective (or where an Asset Swap Charged Asset becomes a Defaulted Charged Asset) (a) the Trustee shall accordingly release the Outgoing Asset(s) or Defaulted Charged Asset (as the case may be) (each as defined in the Asset Swap Agreement) from the Security Interests in accordance with the Trust Instrument to enable the transfer to the Asset Swap Counterparty and (b) the Issuer shall notify the Principal Paying Agent, the Calculation Agent and the Securityholders."

#### 35. Definitions

**Additional Disruption Event** means, in respect of the Commodity Index or an Underlying Index, the occurrence of any of Change of Law, Hedging Disruption and/or Increased Cost of Hedging, as determined by the Calculation Agent in its sole discretion.

**Aggregate Outstanding Principal Amount** means, on any date, the aggregate Outstanding Principal Amount of all Securities outstanding on such date.

**Asset Swap Charged Assets** means the benefits, interest, right and title in and to the Initial Asset Swap Charged Assets and the Replacement Asset Swap Charged Assets.

**Change in Law** means that, on or after the Strike Date (a) due to the adoption of or any change in any applicable law or regulation (including, without limitation, any tax law), or (b) due to the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), the Calculation Agent determines in its sole and absolute discretion that (i) it has become illegal to hold, acquire or dispose of any relevant security (or other component) comprised in an Underlying Index or (ii) the Issuer and/or a Counterparty will incur a materially increased cost in performing its obligations in relation to the Securities and/or a Swap Agreement (including, without limitation, due to any increase in tax liability, decrease in tax benefit or other adverse effect on the tax position of the Issuer).



**Charged Assets** means the benefits, interest, right and title in and to the Initial Asset Swap Charged Assets and the Replacement Asset Swap Charged Assets (in each case to the extent not transferred to the Asset Swap Counterparty pursuant to the Asset Swap CSA or the Commodity Swap Counterparty pursuant to the Commodity Swap CSA) and the Eligible Credit Support transferred by the Counterparties to, and held by, the Custodian (on behalf of the Issuer) from time to time.

**Commodity Business Day** means each day on which the New York Mercantile Exchange (NYMEX) or any successor thereto as determined by the Calculation Agent, is open for trading notwithstanding such exchange closing prior to its scheduled closing time.

**Commodity Index** means the Merrill Lynch Commodity index eXtra LDA Long-Short.

**Commodity Index Cut-Off Date** means the second Business Day prior to the Maturity Date

**Commodity Reference Price** means, in respect of any date of determination, the Specified Price for the Commodity Index in respect of such date, as published by the Index Sponsors and displayed on the Price Source.

**Counterparties** means the Asset Swap Counterparty and the Commodity Swap Counterparty (and **Counterparty** means each of them).

**Early Redemption Amount** means (a) the net proceeds of realisation of, or enforcement with respect to the Charged Assets or the Mortgaged Property, as applicable (following payment of all amounts due to the Trustee or the Selling Agent, as the case may be, including any costs, expenses and taxes incurred in connection with such realisation or enforcement), converted (if applicable) into EUR at the then prevailing spot rate of exchange (as determined by the Calculation Agent) plus (b) the sum of the Termination Values in respect of each Swap Transaction as at the Early Termination Date (as defined in the Swap Agreements), as determined by the Calculation Agent minus (c) the aggregate of the Termination Currency Equivalent of the Unpaid Amounts owing to the Counterparties plus (d) the aggregate of the Termination Currency Equivalent of the Unpaid Amounts owing to the Issuer.

**Fitch** means Fitch Ratings Ltd., including any official successor to Fitch and any successor to the ratings business thereof.

**Hedging Disruption** means that the Issuer and/or a Counterparty is unable, after using commercially reasonable efforts, to (a) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) it deems necessary to hedge the equity or other price risk of the Issuer issuing and performing its obligations with respect to the Securities and/or a Swap Agreement, or (b) realise, recover or remit the proceeds of any such transaction(s) or asset(s).

**Increased Cost of Hedging** means that the Issuer and/or a Counterparty would incur a materially increased (as compared with circumstances existing on the Strike Date) amount of tax, duty, expense or fee (other than brokerage commissions) to (a) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) it deems necessary to hedge the equity or other price risk of the Issuer and/or such Counterparty issuing and performing its obligations with respect to the Securities and/or a Swap Agreement, or (b) realise, recover or remit the proceeds of any such transaction(s) or asset(s), provided that any such materially increased amount that is incurred solely due to the deterioration of the creditworthiness of the Issuer and/or such Counterparty shall not be deemed an Increased Cost of Hedging.

**Index Sponsors** means Merrill Lynch Pierce, Fenner & Smith Limited and/or Merrill Lynch Commodities, Inc.

**Market Disruption Event** means the occurrence of any one or more of the following events, as determined by the Calculation Agent in its sole and absolute discretion:

- (i) a temporary or permanent failure by the Price Source to announce or publish (a) the Commodity Reference Price or (b) the closing price for any futures contract included in any Underlying Index;
- (ii) a material limitation, suspension or disruption of trading in one or more of the futures contracts included in an Underlying Index, which results in a failure by the exchange on which each applicable futures contract is traded to report a closing price for such contract on the day on which such event occurs or any succeeding day on which it continues; or
- (iii) the closing price for any futures contract included in an Underlying Index is a "limit price", which means that the closing price for such contract for a day has increased or decreased from the previous day's closing price by the maximum amount permitted under applicable exchange rules.

**Moody's** means Moody's Investor Service, Inc. and any successor to the ratings business thereof.

**Pricing Date** means 15 November 2016, or if such date is not a Commodity Business Day, the earlier of (i) the next following Commodity Business Day and (ii) the Commodity Index Cut-Off Date.

**Price Source** means Bloomberg (Ticker: MLCXADLS Index), provided that if the Commodity Reference Price is not published on Bloomberg (Ticker: MLCXADLS Index) on the relevant date of determination, the Calculation Agent may, in its sole and absolute discretion (i) use a successor page or publication or alternative source as it considers appropriate, (ii) determine that such non-publication constitutes a Market Disruption Event or (iii) determine that such non-publication amounts to an Index Adjustment Event.

**Replacement Asset Swap Charged Assets** has the meaning given in the Asset Swap Agreement.

**S&P** means Standard and Poor's Rating Group, a division of McGraw-Hill, Inc. and any successor to the ratings business thereof.

**Specified Price** means the official closing level of the Commodity Index.

**Strike Date** means 23 February 2011.

**Successor Index** has the meaning given in paragraph 33 of the Issue Terms.

**Successor Index Sponsor** has the meaning given in paragraph 33 of the Issue Terms.

**Swap Agreements** means the Asset Swap Agreement and the Commodity Swap Agreement.

**Swap Transaction** means either of (i) the Asset Swap Transaction and (ii) the Commodity Swap Transaction.

**Termination Currency Equivalent** has the meaning given in the Swap Agreements.

**Termination Value** means, in respect of a Swap Transaction and any date of determination, the amount in EUR which the relevant Counterparty would pay to the Issuer (expressed as a positive amount) or require the Issuer to pay to the relevant Counterparty (expressed as a negative amount) assuming that such date was an Early Termination Date under the relevant Swap Agreement. Such amount shall be determined by reference to the amount which the Issuer would be required to pay (or

receive, as applicable) to enter into a transaction with a market dealer that would have the effect of preserving for the Issuer the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) of the relevant Swap Agreement that would have been required after the relevant date, and for the purposes of which, the value of any payments or deliveries scheduled to be made between the parties that are contingent on the occurrence of a default in respect of an issuer of Asset Swap Charged Assets shall be calculated on the basis of risky discount factors, as determined by reference to the prevailing credit default swap level in the relevant currency for the relevant issuer. To the extent that the payments due under such Swap Transaction to and from the Issuer are in different currencies, the Termination Value of the Swap Transaction shall be determined by reference to the appropriate cross-currency basis swap(s) (as determined by the Calculation Agent in its sole discretion).

**Underlying Index** means each underlying index, the level of which is used by the Index Sponsor to determine the closing price of the Commodity Index.

**Underlying Obligor** means, in respect of an Asset Swap Charged Asset, the issuer of such Charged Asset.

**Unpaid Amounts** has the meaning given in the Swap Agreements.

## ANNEX

### INITIAL ASSET SWAP CHARGED ASSETS

| ISIN         | UNDERLYING<br>OBLIGOR             | NOMINAL<br>AMOUNT<br>(EUR) | CURRENCY | INITIAL<br>MARKET<br>VALUE<br>(EUR) |
|--------------|-----------------------------------|----------------------------|----------|-------------------------------------|
| XS0071095045 | HELLENIC<br>REPUBLIC<br>OF GREECE | 1,700,000,000              | JPY      | 10,250,000                          |
| US411349AA15 | HANSON<br>LTD                     | 9,900,000                  | USD      | 7,250,000                           |

**BEARER SECURITIES BASE CONDITIONS MODULE**

**JULY 2009 EDITION**

**to be incorporated by reference into  
the Conditions and the Trust Instrument for  
an issue of repackaged Securities  
arranged by  
MERRILL LYNCH INTERNATIONAL**

## BEARER SECURITIES BASE CONDITIONS MODULE

### JULY 2009 EDITION

**This Bearer Securities Base Conditions Module sets out the basic terms and conditions for Securities governed by English law and will apply in respect of all Series of Securities issued in bearer form. Other Conditions Modules will apply in addition, as specified in the Issue Terms.**

#### **1. FORM, DENOMINATION AND TITLE**

- (a) Bearer Securities are serially numbered and in the Specified Denomination(s) set out in the Issue Terms. Title to Bearer Securities and (if applicable) the related Coupons will pass by delivery.
- (b) Bearer Securities will either:
  - (i) initially be represented by a Temporary Bearer Global Security; or
  - (ii) be represented on issue by a Permanent Bearer Global Security,

as specified in the Issue Terms.

The Temporary Bearer Global Security or Permanent Bearer Global Security, as the case may be, will be delivered on or before the Issue Date to the Common Safekeeper.

Beneficial interests in a Temporary Bearer Global Security will be exchangeable for either beneficial interests in a Permanent Bearer Global Security or definitive Bearer Securities, as provided in the Temporary Bearer Global Security. A Temporary Bearer Global Security may be exchanged on or after the Exchange Date and upon certification as to non-U.S. beneficial ownership as required by U.S. Treasury regulations.

A Permanent Bearer Global Security will be exchangeable, in whole but not in part, for definitive Bearer Securities only upon the occurrence of an Exchange Event, as provided in the Permanent Bearer Global Security.

- (c) No beneficial owner of an interest in a Global Security will be able to exchange or transfer that interest, except in accordance with the applicable procedures of the Clearing Systems and in accordance with and subject to the terms of such Global Security.
- (d) For so long as any of the Securities is represented by a Bearer Global Security held by a Common Safekeeper, each person who is for the time being shown in the records of the Clearing Systems as entitled to a particular nominal amount of Securities shall be deemed to be the holder of such nominal amount of Securities for all purposes other than with respect to the payment of principal, premium (if any), or interest or other amount on such Securities. With respect to such payment, such Common Safekeeper shall be deemed to be the holder of such nominal amount of Securities in accordance with and subject to the terms of the relevant Global Security. Any certificate or other document issued by the Clearing Systems as to the nominal amount of Securities standing to the account of any person shall be conclusive and binding for all purposes save in the case of manifest error. In determining whether a particular person is entitled to a particular nominal amount of Securities as aforesaid, the Trustee may rely on such evidence and/or information and/or certification as it shall, in its absolute discretion, think fit and, if it does so rely, such evidence and/or information and/or certification shall, in the absence of manifest error, be conclusive and binding on all concerned.

- (e) Subject to paragraph (d) above, the Issuer, the Counterparty (if any), the Trustee and the Agents may deem and treat the holder of any Bearer Security as the owner thereof for all purposes. Except as ordered by a court of competent jurisdiction or as required by applicable law, the Issuer, each Counterparty, the Trustee and the Agents shall not be affected by any notice to the contrary, whether or not the Security shall be overdue. All payments made to any such holder shall be valid and, to the extent of the sums so paid, effective to satisfy and discharge the liability for the moneys payable upon such Securities.

## 2. STATUS

The Securities are secured, limited recourse obligations of the Issuer, secured in the manner described in Condition 3 (*Security*) and recourse in respect of which is limited in the manner described in Condition 12 (*Enforcement*). The Securities rank and will rank, unless otherwise specified in the Issue Terms, *pari passu* without any preference among themselves.

## 3. SECURITY

The Securities are constituted and secured by a Trust Instrument.

Unless otherwise specified in the Issue Terms, the Issuer's obligations under the Securities and the Charged Agreement(s) (if any) will be secured by the following security:

- (a) a first ranking assignment by way of security of all of the Issuer's Rights under the Agency Agreement;
- (b) a first ranking assignment by way of security of all of the Issuer's Rights to the Charged Assets;
- (c) a first ranking assignment by way of security of the Issuer's Rights under the Charged Agreement(s) (other than in respect of the Issuer's obligations under the Charged Agreement(s)), the Issuer's Rights under the Sale Agreement and the Issuer's Rights under any Additional Agreement; and
- (d) a first ranking assignment by way of security of all of the Issuer's Rights to any of its bank accounts in respect of the Securities (but excluding, for the avoidance of doubt, the Issuer's bank account containing the paid up ordinary share capital of the Issuer).

The secured creditors of all Series of Securities of the Issuer will also be secured under the Trust Instrument executed in respect of the first Series of Securities by a first floating charge over the whole of the assets and undertaking of the Issuer (other than, *inter alia*, the money representing paid up ordinary share capital of the Issuer and any transaction fees payable to the Issuer on each issue of Securities) which will become enforceable upon formal notice being given of an intention to appoint an administrator in relation to the Issuer or an application being made to, or a petition being lodged or documents being filed with, the court for administration in relation to the Issuer.

The Issue Terms will specify whether any other security interest will be created under the Trust Instrument and/or under an Additional Charging Document.

## 4. CHARGED ASSETS

### (a) Initial Charged Assets

The Vendor will procure that the initial Charged Assets as specified in the Issue Terms (the "**Initial Charged Assets**") are delivered to the Custodian on the Issue Date, to the extent that such Charged

Assets are capable of being delivered. With effect from such delivery, the Charged Assets will be held by the Custodian on behalf of the Issuer, subject to the Security Interests.

(b) (i) **Substitution at direction of Counterparty**

The Issue Terms will specify whether the Initial Charged Assets may be substituted from time to time for alternative charged assets and, if substitution is applicable, whether such substitution is on the Nominal Basis or the Market Value Basis. If no such specification is made in the Issue Terms, substitution at the direction of the Counterparty shall be deemed to be not applicable. Where such substitution is applicable, the Counterparty (if any) may, from time to time, at its cost and subject to the Trust Instrument, by giving not less than 5 Business Days' (or such other period of notice as may be specified in the Issue Terms) notice (a "**Substitution Notice**") in writing to the Issuer and the Trustee require that any securities or other assets for the time being comprising the Charged Assets be replaced by Eligible Investments and the Trustee shall accordingly release the Charged Assets from the Security Interests in accordance with the Trust Terms Module to enable such substitution.

A substitution may occur provided that:

- (A) upon any release of the substituted Charged Assets from the Security Interests, the replacement Charged Assets are secured by the Issuer on the same terms (*mutatis mutandis*) as the substituted Charged Assets;
- (B) all requirements of any relevant Stock Exchange or competent authority are complied with; and
- (C) any other conditions specified in the Issue Terms (including Rating Agency requirements, if any) are complied with.

Upon receipt of a Substitution Notice, the Issuer shall notify the Principal Paying Agent, the Custodian, the Calculation Agent, the Securityholders and, in the case of Securities that are rated, the relevant Rating Agencies.

The Counterparty shall bear and pay, and shall indemnify the Issuer and the Trustee against, all costs, expenses and taxes (including, without limitation, stamp duty) payable in connection with a substitution.

(ii) **Substitution at the request of Securityholders**

The Issue Terms will specify whether the Initial Charged Assets may be substituted from time to time for alternative charged assets and, if substitution is applicable, whether such substitution is on the Nominal Basis or the Market Value Basis. If no such specification is made in the Issue Terms, substitution at the request of the Securityholders shall be deemed to be applicable on the Nominal Basis. In the case of Credit-Linked Securities, unless otherwise specified in the Issue Terms, if no Credit Event or event under Condition 8(b), 8(c) or 11 has occurred, on the first Business Day which falls three calendar months after the Issue Date (or if there is no corresponding day in such month, the last Business Day in such month) and every first Business Day three calendar months thereafter (or as aforesaid), any Securityholder may, by delivering a written request (a "**Sale Request**", any such Securityholder delivering such request, a "**Requesting Securityholder**") to the Principal Paying Agent, request the Issuer to sell the Charged Assets and reinvest the proceeds thereof in cash or one or more Eligible Assets identified by such Securityholder in the Sale Request (the "**Replacement Assets**") in accordance with this Condition 4(b)(ii).



If the Principal Paying Agent receives a Sale Request it shall, within three Business Days of such receipt, forward a copy of the Sale Request to each Securityholder in accordance with Condition 15 (*Notices*) and the Issuer, copied to the Custodian, the Trustee and the Counterparty, asking the Securityholders if they consent to such sale and replacement; provided that the Principal Paying Agent shall not forward such request to the Securityholders if the Replacement Assets have been purchased pursuant to a prior Sale Request within the prior three months.

If within five Business Days' following the Principal Paying Agent's delivery of a copy of the Sale Request to the Securityholders, the Required Minimum Securityholders notify the Principal Paying Agent in writing (copied to the Trustee, the Selling Agent and the Custodian) that they consent to such sale of the Charged Assets and reinvestment in the Replacement Assets, and that they agree to pay all costs incurred in connection with the sale of the then Charged Assets and the purchase of the Replacement Assets (including, without limitation, any Swap Adjustment Costs and Collateral Top-Up Costs (each as defined below) as well as legal fees in amending any of the documents relating to the Securities to accommodate such change and the documents in respect of the new issue (together, the "**Restructure Documents**")), the Principal Paying Agent shall inform the Selling Agent and the Trustee. The Selling Agent will, upon release of the security by the Trustee, sell such principal amount of the Charged Assets, rounded down to the nearest denomination of such Charged Assets (the "**Liquidation Assets**") as bears the same proportion to the then total principal amount of the outstanding Charged Assets as the principal amount of the Securities held by the Securityholders which have consented to the sale of the Charged Assets (the "**Consenting Holders**") bears to the then total Outstanding Principal Amount of the Securities.

The Selling Agent shall solicit bids for the purchase of the Charged Assets from at least two bidders (other than Merrill Lynch International or any of its Affiliates) and shall then arrange for the sale of the Charged Assets to the person which has made the higher or highest, as applicable, firm bid for such securities; provided however, that if two or more bidders have the same highest bid, then the Selling Agent may elect to sell such securities to any such bidder; provided, further, that notwithstanding anything to the contrary herein, the Selling Agent may sell the Charged Assets to itself or an Affiliate if it or its Affiliates, as applicable, elects to match such higher or highest bid, as applicable. The Issuer shall then, through the Selling Agent, purchase the Replacement Assets with the proceeds (the "**Liquidation Proceeds**") of the Liquidation Assets or, if such proceeds are not sufficient to make such purchase, with such proceeds and the amount, which must be contributed by the Consenting Holders, equal to the amount of such deficiency (the "**Collateral Top Up Costs**").

Notwithstanding the foregoing, the Issuer shall not sell any Charged Assets in connection with its receipt of a Sale Request unless the following conditions have been met:

- (A) The Replacement Assets must (i) be readily available and eligible for purchase by the Issuer, (ii) satisfy the requirements for Eligible Assets, (iii) mature on or before the Maturity Date or, if earlier, the Scheduled Termination Date, (iv) (if such substitution is on the Nominal Basis) be in an aggregate principal amount at least equal to the principal amount of the Charged Assets for which they are Replacement Assets (or its equivalent in the currency of the relevant Replacement Assets) and (v) not cause the Issuer to suffer tax in respect of its income in respect of such Replacement Assets;
- (B) If the cashflows payable on the Replacement Assets are different from the cashflows payable on the Liquidated Assets, the Consenting Holders must pay to the Principal Paying Agent for distribution to the Counterparty, an amount (the "**Swap**

**Adjustment Cost**"), as notified to the Principal Paying Agent by the Counterparty, sufficient to compensate the Counterparty for amending or executing a swap transaction with the Issuer:

- (x) (in the case where the relevant Swap Agreement does not contain an interest rate and/or cross currency transaction) to ensure that the cashflows available to the Issuer to make payments of interest on each Interest Payment Date are equal to the aggregate interest amounts payable on the Securities, if applicable and any additional costs incurred by the Counterparty in establishing any swap such that the aggregate Interest Amounts remain the same; or
  - (y) (in the case where the relevant Swap Agreement does contain an interest rate and/or cross currency transaction) any loss which will be incurred by the Counterparty as a result of the reduction in the payments to be made to the Counterparty under such interest rate and/or cross-currency swap transaction.
- (C) If the purchase price of a principal amount of the Replacement Assets equal to the principal amount of the Liquidated Assets is less than the amount of the Liquidation Proceeds, the amount of such excess proceeds shall be applied to purchase additional Replacement Assets (such amount to be converted to the currency of the Replacement Assets, if necessary).
- (D) If the Securities are rated by S&P, S&P must confirm to the Issuer, the Counterparty and the Trustee, in writing, that the replacement of the Charged Assets with the Replacement Assets will not cause a downgrade in their rating of the Securities and that the New Series of Securities (as defined below) shall have the same rating as the Securities.
- (E) All the Restructure Documents have been duly executed by all parties.

Prior to selling any Charged Assets in connection with a replacement as described herein, the Issuer and the Counterparty may require that the Consenting Holders make a cash deposit with the Issuer sufficient to cover all costs which are to be borne by the Consenting Holders as described herein.

If the consent of the Required Minimum Securityholders has been obtained but less than all of the Securityholders are Consenting Holders, the Issuer, the Counterparty and the Trustee shall deem the Consenting Holders as having exchanged their Securities for a new series of Securities (the "**New Series of Securities**") which will be secured on the Replacement Assets (but not any of the then Charged Assets which have not been liquidated) and a new Swap Agreement (the "**Replacement Swap**") which the Issuer will enter into with the Counterparty on the date of purchase of the Replacement Assets. The Replacement Swap will be structured in a manner similar to the existing Swap Agreement but will be adjusted to take account of the change in the cash flows for the Replaced Assets.

All parties, at the expense of the Consenting Holders, will enter into any amendments to the other transaction documents and any documentation required to amend the Securities and to effect the New Series of Securities and will ensure that the Securities as amended and the New Series of Securities preserve the economic equivalence of the Securities prior to such replacement. Upon the Issuer's purchase of any Replacement Assets as described in the preceding paragraphs such Replacement Assets shall constitute Charged Assets for the New Series of Securities.

All Securityholders are deemed to have accepted Condition 4(b)(ii) and to be bound by the terms thereof even if not Consenting Securityholders.

(iii) **Substitution with Cash Collateral**

- (A) In the event the Vendor does not deliver to the Issuer on the Issue Date all or any part of the Initial Charged Assets pursuant to the Sale Agreement, the Issuer shall, on the Issue Date, deposit the Cash Collateral into the Cash Deposit Account. The Cash Collateral shall form part of the Charged Assets and shall be subject to the security interest in favour of the Trustee created pursuant to the Trust Instrument.
- (B) The Vendor will use reasonable endeavours to pursue delivery of the Initial Charged Assets (whether or not such Charged Assets are subject to default (howsoever described)) to the Issuer in accordance with normal market practice pursuant to the Sale Agreement. In the event the Vendor delivers the Initial Charged Assets (or part thereof) to the Issuer after the Issue Date, the Issuer shall substitute the Initial Charged Assets (or part thereof) for an amount of cash held in the Cash Deposit Account equal to an amount which is the product of (1) the principal amount of such Initial Charged Assets divided by the aggregate principal amount of the Initial Charged Assets multiplied by (2) the Price. Such Initial Charged Assets shall be deposited with the Custodian in the Custodian's account pursuant to the Agency Agreement. From the time of such deposit, such amounts removed from the Cash Deposit Account will not form part of the Charged Assets.
- (C) The Issuer's ability to deposit cash on the Issue Date shall be for the purposes of ensuring that the Securities are fully secured. Any interest earned on the Cash Deposit Account shall be paid by the Issuer to the Counterparty under the Swap Agreement. For the avoidance of doubt, any substitution pursuant to this Condition 4(b)(iii) shall not affect the payments by the Counterparty to the Issuer under the Swap Agreement.

(c) **Realisation of Charged Assets upon early redemption or Event of Default**

If the Security Interests over any of the Charged Assets become enforceable following an early redemption of the Securities or an Event of Default, the Trustee may in its discretion and, if requested by an Instructing Creditor, shall (subject to being indemnified to its satisfaction) realise such Charged Assets and/or take such action as may be permitted under applicable laws against any obligor in respect of such Charged Assets. The Trustee will not have any liability as to the consequence of such action and will not have regard to the effect of such action on individual Securityholders or the Counterparty. On the occurrence of any such event, each Charged Agreement will terminate in accordance with its terms.

Notwithstanding anything to the contrary in the Issue Terms, if (i) the Counterparty is the Defaulting Party in respect of and as defined in the Swap Agreement at any time; and (ii) "the Counterparty only" is specified as the Instructing Creditor in the Issue Terms, the Instructing Creditor shall be deemed to be the Counterparty or the Securityholders.

**5. APPLICATION OF PROCEEDS**

The Trust Instrument provides for the application of the Realisation Amount in accordance with the relevant Security Ranking Basis.

The Issue Terms will specify the "**Security Ranking Basis**" in accordance with which the Realisation Amount will be applied, being one of the following (or otherwise as specified in the Issue Terms):

- (a) **"Securityholder Priority Basis"** meaning, first, in meeting claims of the Securityholders under the Securities on a *pari passu* and *pro rata* basis and, thereafter, in meeting the claims of the Counterparty (or if more than one Counterparty, meeting the claims of all such Counterparties on the basis as specified in the Issue Terms) under the Charged Agreement(s); or
- (b) **"Pari Passu Basis"** meaning in meeting the claims of the Securityholders and the Counterparty (or if more than one Counterparty, meeting the claims of all such Counterparties on the basis as specified in the Issue Terms) under the Charged Agreement(s) on a *pari passu* and *pro rata* basis; or
- (c) **"Counterparty Priority Basis"** meaning, first, in meeting the claims of the Counterparty (or, if more than one Counterparty, meeting the claims of all such Counterparties on the basis as specified in the Issue Terms) under the Charged Agreement(s) and, thereafter, in meeting the claims of the Securityholders on a *pari passu* and *pro rata* basis; or
- (d) **"Counterparty/Securityholder Priority Basis"** meaning, Counterparty Priority Basis, provided that if the Counterparty is the Defaulting Party in respect of and as defined in the Swap Agreement at any time, the Security Ranking Basis shall be Securityholder Priority Basis.

For the avoidance of doubt, the Counterparty shall not have any claim in respect of the Issuer's Rights under the Charged Agreement(s).

## 6. SHORTFALL AFTER APPLICATION OF PROCEEDS

- (a) All payments to be made by the Issuer in respect of the Securities and the Charged Agreement(s) (if any) will be made only from and to the extent of the sums received or recovered from time to time by or on behalf of the Issuer or the Trustee in respect of the Mortgaged Property in accordance with the Security Ranking Basis specified in the Issue Terms;
- (b) to the extent that such sums are less than the amount which the Securityholders and the Counterparty (if any) may have expected to receive (the difference being referred to as a **"shortfall"**), such shortfall will be borne by such Securityholders and by the Counterparty (if any) in accordance with the Security Ranking Basis specified in the Issue Terms; and
- (c) each holder of Securities, by subscribing for or purchasing the relevant Securities, and each Counterparty (if any) will be deemed to accept and acknowledge that it is fully aware that:
  - (i) the Securityholders and the Counterparty (if any) shall look solely to the sums referred to in paragraph (a) of this Condition 6 (*Shortfall after Application of Proceeds*), as applied in accordance with paragraphs (a) and (b) above (the **"Relevant Sums"**), for payments to be made by the Issuer in respect of the Securities and the Charged Agreement(s) (if any);
  - (ii) the obligations of the Issuer to make payments in respect of the Securities and the Charged Agreement(s) (if any) will be limited to the Relevant Sums and the Securityholders and the Counterparty (if any) shall have no further recourse to the Issuer in respect of the Securities and the Charged Agreement(s) (if any), respectively;
  - (iii) without prejudice to the foregoing, any right of the Securityholders and the Counterparty (if any) to claim payment of any amount exceeding the Relevant Sums shall be automatically extinguished; and
  - (iv) the Securityholders and the Counterparty (if any) shall not be able to petition for the winding up of the Issuer as a consequence of any such shortfall.

Non-payment of any shortfall shall not constitute an Event of Default under Condition 11 (*Events of Default*) nor entitle the Counterparty (if any) or the Swap Guarantor (if any) to terminate the remainder of the Charged Agreement(s) in respect of such Series in the case of a partial termination and in any event, in respect of any other Series.

None of the Trustee, the shareholders of the Issuer, any Dealer, any Counterparty or any Swap Guarantor has any obligation to any Securityholder for payment of any amount by the Issuer in respect of the Securities.

## **7. TYPES OF SECURITIES**

### **(a) Fixed Rate Securities**

Each Fixed Rate Security bears interest on its Outstanding Principal Amount (or, if it is a Partly Paid Security, the amount paid up) as on the first day of a Fixed Interest Period from (and including) the Interest Commencement Date (as specified in the Issue Terms) to (but excluding) the Maturity Date at the rate(s) per annum equal to the Rate(s) of Interest, subject to any cessation of interest in circumstances as set out in the terms of the Securities.

Interest will be payable in arrear on the Interest Payment Date(s) in each year as specified in the Issue Terms, subject as aforesaid. Interest pursuant to this Condition 7(a), whether for a Fixed Interest Period or a period other than a Fixed Interest Period, shall be calculated in respect of each Security (and subject, in respect of Fixed Rate Securities in definitive form, to the paragraph below) as the product of:

- (A) the Rate of Interest;
- (B) in the case of Fixed Rate Securities which are represented by a Global Security, such Security's *pro rata* share of the aggregate Outstanding Principal Amount of the Fixed Rate Securities represented by such Global Security (or, if they are Partly Paid Securities, the aggregate amount paid up); or (ii) in the case of Fixed Rate Securities in definitive form, the Calculation Amount; and
- (C) the applicable Day Count Fraction,

the resultant figure being rounded to the nearest sub-unit of the relevant Currency of Issue, half of any such sub-unit being rounded upwards or otherwise in accordance with applicable market convention.

Where the Specified Denomination of a Fixed Rate Security in definitive form is a multiple of the Calculation Amount, the amount of interest payable in respect of such Fixed Rate Security shall be the product of the interest amount (determined in the manner provided above) for the relevant Calculation Amount and the amount by which the relevant Calculation Amount is multiplied to reach the Specified Denomination, without any further rounding.

### **(b) Floating Rate Securities and Indexed Interest Securities**

#### **(i) Interest Payment Dates**

Each Security which is a Floating Rate Security or Indexed Interest Security bears interest on its Outstanding Principal Amount (or, if it is a Partly Paid Security, the amount paid up) as on the first day of an Interest Period from (and including) the Interest Commencement Date to (but excluding) the Maturity Date, subject to any cessation of interest in circumstances as set out in the Issue Terms.

Such interest will be payable in arrear on either:

- (A) the Specified Interest Payment Date(s) in each year specified in the Issue Terms; or
- (B) if no Specified Interest Payment Date(s) is/are specified in the Issue Terms, each date which falls the number of months or other period specified as the Specified Period in the Issue Terms after the preceding Interest Payment Date or, in the case of the first Interest Payment Date, after the Interest Commencement Date,

each an "**Interest Payment Date**".

Such interest will be payable in respect of each Interest Period (which expression shall, in these Conditions, mean the period from (and including) an Interest Payment Date (or the Interest Commencement Date) to (but excluding) the next (or first) Interest Payment Date).

(ii) ***Rate of Interest***

The Rate of Interest payable from time to time in respect of Floating Rate Securities and Indexed Interest Securities will be determined in the manner specified in the Issue Terms.

(A) ISDA Determination for Floating Rate Securities

Where ISDA Determination is specified in the Issue Terms as the manner in which the Rate of Interest is to be determined, the Rate of Interest for each Interest Period will be the relevant ISDA Rate plus or minus (as indicated in the Issue Terms) the Margin (if any).

For the purposes of this sub-paragraph (A), "**ISDA Rate**" for an Interest Period means a rate equal to the Floating Rate that would be determined by the Agent Bank under an interest rate swap transaction if the Agent Bank were acting as Calculation Agent for that swap transaction under the terms of an agreement incorporating either of the 2000 ISDA Definitions or the 2006 ISDA Definitions (as specified in the Issue Terms) and under which:

- (1) the Floating Rate Option is as specified in the Issue Terms;
- (2) the Designated Maturity is a period specified in the Issue Terms; and
- (3) the relevant Reset Date is either (i) if the applicable Floating Rate Option is based on the London inter-bank offered rate ("**LIBOR**") or on the Euro-zone inter-bank offered rate ("**EURIBOR**") for a currency, the first day of that Interest Period or (ii) in any other case, as specified in the Issue Terms.

For the purposes of this sub-paragraph (A), "**Floating Rate**", "**Calculation Agent**", "**Floating Rate Option**", "**Designated Maturity**" and "**Reset Date**" have the meanings given to those terms in the 2000 ISDA Definitions or the 2006 ISDA Definitions, as the case may be.

When this sub-paragraph (A) applies, in respect of each relevant Interest Period the Agent Bank or the Calculation Agent, as the case may be, will be deemed to have discharged its obligations under Condition 7(b)(iv) (*Types of Securities - Floating Rate Securities and Indexed Interest Securities*) in respect of the determination of the Rate of Interest if it has determined the Rate of Interest in respect of such Interest Period in the manner provided in this sub-paragraph (A).

(B) Screen Rate Determination for Floating Rate Securities

Where Screen Rate Determination is specified in the Issue Terms as the manner in which the Rate of Interest is to be determined, the Rate of Interest for each Interest Period will, subject as provided below, be either:

- (1) the offered quotation; or
- (2) the arithmetic mean (rounded if necessary to the fifth decimal place, with 0.000005 being rounded upwards) of the offered quotations,

(expressed as a percentage rate per annum) for the Reference Rate which appears or appear, as the case may be, on the Relevant Screen Page as at 11.00 a.m. (London time, in the case of LIBOR, or Brussels time, in the case of EURIBOR) on the relevant Interest Determination Date plus or minus (as indicated in the Issue Terms) the Margin (if any), all as determined by the Agent Bank. If 5 or more of such offered quotations are available on the Relevant Screen Page, the highest (or, if there is more than one such highest quotation, one only of such quotations) and the lowest (or, if there is more than one such lowest quotation, one only of such quotations) shall be disregarded by the Agent Bank for the purpose of determining the arithmetic mean (rounded as provided above) of such offered quotations.

The Agency Agreement contains provisions for determining the Rate of Interest in the event that the Relevant Screen Page is not available or if, in the case of (1) above, no such quotation appears or, in the case of (2) above, fewer than 3 such offered quotations appear, in each case as at the time specified in the preceding paragraph.

If the Reference Rate from time to time in respect of Floating Rate Securities is specified in the Issue Terms as being other than LIBOR or EURIBOR, the Rate of Interest in respect of such Securities will be determined as provided in the Issue Terms.

(iii) ***Minimum and/or Maximum Interest Rate***

If the Issue Terms specify a Minimum Interest Rate for any Interest Period, then, in the event that the Rate of Interest in respect of such Interest Period determined in accordance with the provisions of sub-paragraph (ii) above is less than such Minimum Interest Rate, the Rate of Interest for such Interest Period shall be such Minimum Interest Rate.

If the Issue Terms specify a Maximum Interest Rate for any Interest Period, then, in the event that the Rate of Interest in respect of such Interest Period determined in accordance with the provisions of sub-paragraph (ii) above is greater than such Maximum Interest Rate, the Rate of Interest for such Interest Period shall be such Maximum Interest Rate.

(iv) ***Determination of Rate of Interest and Interest Amounts***

The Agent Bank (in the case of Floating Rate Securities) or the Calculation Agent (in the case of Indexed Interest Securities) will, on or as soon as practicable after each time at which the Rate of Interest is to be determined, but in any event no later than the second Business Day thereafter, determine and notify the Issuer, the Trustee, the Counterparty (if any) and the Principal Paying Agent of (i) the Rate of Interest for the relevant Interest Period and (ii) the amounts payable in respect of each Security (the "**Interest Amounts**") pertaining to such Interest Period.

The Interest Amount payable in respect of each Security (and subject, in respect of Floating Rate Securities or Index Linked Interest Securities in definitive form, to the paragraph below) shall be the product of:

- (A) the Rate of Interest;
- (B) (i) in the case of Floating Rate Securities or Index Linked Interest Securities which are represented by a Global Security, such Security's *pro rata* share of the aggregate Outstanding Principal Amount of the Securities represented by such Global Security (or, if they are Partly Paid Securities, the aggregate amount paid up) as of the last day of the relevant Interest Period; or (ii) in the case of Floating Rate Securities or Index Linked Interest Securities in definitive form, the Calculation Amount; and
- (C) the applicable Day Count Fraction,

the resultant figure being rounded to the nearest sub-unit of the relevant Currency of Issue, half of any such sub-unit being rounded upwards or otherwise in accordance with applicable market convention.

Where the Specified Denomination of a Floating Rate Security or an Index Linked Interest Security in definitive form is a multiple of the Calculation Amount, the Interest Amount payable in respect of such Floating Rate Security or Index Linked Security shall be the product of the Interest Amount (determined in the manner provided above) for the relevant Calculation Amount and the amount by which the relevant Calculation Amount is multiplied to reach the Specified Denomination, without any further rounding.

(v) ***Publication of Rate of Interest and Interest Amounts***

The Principal Paying Agent will cause the Rate of Interest and the Interest Amounts for each Interest Period and the relevant Interest Payment Date to be notified to any Stock Exchange upon which the Securities are (as specified in the Issue Terms) listed and to be published in accordance with relevant provisions relating to notices as soon as possible after their determination, but in any event no later than the 4th Business Day thereafter. The Interest Amounts and Interest Payment Date so published may subsequently be amended with the consent of the Trustee (or appropriate alternative arrangements made with the consent of the Trustee by way of adjustment) without notice in the event of an extension or shortening of the Interest Period. Any such amendment will be promptly notified as aforesaid to each Stock Exchange on which the relevant Floating Rate Securities or Indexed Interest Securities are for the time being listed and to the Securityholders.

(vi) ***Determination or calculation by Trustee***

If the Agent Bank or, as the case may be, the Calculation Agent at any material time defaults in its obligation to determine the Rate of Interest or the Interest Amounts in accordance with sub-paragraphs (ii) and (iv) above, the Trustee shall (i) determine the Rate of Interest at such rate as, in its absolute discretion (having such regard as it shall think fit to the procedure described in sub-paragraph (ii) above), it shall deem fair and reasonable in all the circumstances and (ii) calculate the Interest Amounts in the manner specified in sub-paragraph (iv) above. Such determination and calculation shall be deemed to be a determination and calculation by the Agent Bank or, as the case may be, the Calculation Agent.



(vii) ***Notifications to be final***

All notifications, opinions, determinations, certificates, quotations and decisions given, expressed, made or obtained for the purposes of the provisions summarised under this Condition whether by the Agent Bank, the Calculation Agent or the Trustee, will (in the absence of wilful default, bad faith or manifest error) be binding on the Issuer, the Counterparty (if any), the Agent Bank, the Calculation Agent, the Trustee, the Paying Agents and all Securityholders, as applicable, and (subject as aforesaid) no liability to the Securityholders shall attach to the Agent Bank, the Calculation Agent or the Trustee in connection with the exercise or non-exercise by them of their powers, duties and discretions pursuant to this Condition.

(c) **Partly Paid Securities**

If the Issue Terms specify that the Securities are Partly Paid Securities, the amount of each payment comprising the issue price, the date on which each payment is to be made and the consequences (if any) of failure to make any such payment will be as set out in the Issue Terms.

Other than Partly Paid Securities which are Zero Coupon Securities, interest will accrue on the paid-up nominal amount of such Securities and as specified in the Issue Terms.

(d) **Principal Protected CDO Securities**

If the Issue Terms specify that the Securities are Principal Protected CDO Securities, unless otherwise specified therein:

- (i) the Securities will not bear a pre-determined rate of interest;
- (ii) in the event that distributions are made by, or payments of interest and/or principal are made by, the obligor of the relevant Charged Assets specified in the Issue Terms, such sums will be paid to the Securityholders within 2 Business Days (or such other number of days as may be specified in the Issue Terms) of receipt thereof; and
- (iii) the Issue Terms will set out the expected dates of any distributions or payments.

(e) **Equity-Linked Securities**

If the Issue Terms specify that the Securities are Equity-Linked Securities, the Issue Terms will set out the expected dates of any distributions or payments.

(f) **Rounding in respect of all Securities**

Subject to Conditions 7(a) (*Types of Securities – Fixed Rate Securities*) and 7(b)(iv) (*Types of Securities – Floating Rate Securities and Indexed Interest Securities*), all amounts resulting from any calculations referred to in these provisions will be rounded downwards to the nearest unit or sub-unit of currency or as described in the Issue Terms.

(g) **Cessation of interest**

Unless otherwise specified in the Issue Terms, notwithstanding any other terms of these Conditions, if (i) an Event of Default in relation to the Securities occurs or the Securities are redeemed early (other than as a result of a Credit Event), (ii) an event of default in relation to the Charged Assets occurs or any of the Charged Assets are redeemed early or (iii) the Securities are redeemed pursuant to a termination under the Swap Agreement (other than as a result of a Credit Event), the interest on the Securities will cease to accrue from, and including, the Interest Payment Date immediately preceding the date on which any of the events referred to in (i) to (iii) above have occurred (or in the

case of the first Fixed Interest Period or, as the case may be, Interest Period, the Interest Commencement Date).

(h) **Default interest**

If payment to any Securityholder of any amount due in respect of the Securities is improperly withheld or refused, interest shall accrue as provided in the Trust Instrument at the rate specified for the purpose in the Issue Terms (or if no such rate is specified, the rate shall be deemed to be zero). References to any payment due or owing in respect of the Securities shall be deemed to include any interest which may be payable under this Condition 7 (*Types of Securities*).

**8. REDEMPTION**

(a) **Final redemption**

Each Security will be redeemed by the Issuer on the Maturity Date at its Final Redemption Amount or as otherwise specified in the Issue Terms, unless such Security has been redeemed, purchased or cancelled prior to such date.

(b) **Redemption for taxation reasons**

(i) If:

- (A) the Issuer, on the occasion of the next payment due in respect of the Securities, would be required by law to withhold or account for tax in respect of such payment or would suffer tax in respect of its income in respect of the Charged Assets or receipt of payments under any Charged Agreement (including the deductions of tax from such payments) so that it would be unable to make payment of the full amount payable on the Securities without recourse to further sources of funding or any payment of principal or interest or other distribution in respect of the Charged Assets for the time being is required to be made subject to any deduction or withholding on account of any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any such payment of interest, or on account of any right of set-off, or for any other reason, or
- (B) the Issuer, on the occasion of the next payment due in respect of any Charged Agreement, would be required by law to withhold or account for tax or would suffer tax in respect of its income in respect of the Charged Assets (including the deductions of tax from such payments) so that it would be unable to make payment of the full amount payable under such Charged Agreement without recourse to further sources of funding, or
- (C) the cost to the Issuer of complying with its obligations under the Trust Instrument or meeting its operating or administrative expenses would, in the opinion of the Issuer, be materially increased compared to such cost as of the Issue Date (including, without limitation, as a result of any adverse change in tax rulings in respect of the Issuer or any adverse change of law or practice (or interpretation or administration of the same) which applies to the Issuer), or
- (D) the Issuer would be required to account for any tax or suffer tax in respect of its income in respect of the Charged Assets or receipt of payments (whether actual or deemed) under any Charged Agreement as a result of the then accounting treatment, as certified by the Issuer's auditors,

then the Issuer shall so inform the Trustee, the Principal Paying Agent, the Calculation Agent and the Counterparty (if any).

The date on which any such withholding or deduction is suffered or increased amount is payable is referred to as the "**Shortfall Date**". The Issuer shall use its reasonable endeavours to arrange the substitution as the principal debtor under the Securities of a company, approved by the Trustee (and in the case of Securities that are rated, subject to Rating Agency Confirmation), incorporated in another jurisdiction wherein (in respect of sub-paragraphs (A), (B) and (D) of Condition 8(b)(i)) such withholding would not be applicable, or such tax would not be accountable or suffered, or (in respect of sub-paragraph (C) of Condition 8(b)(i)) such costs or operating or administrative expenses would not materially exceed the Issuer's costs or operating or administrative expenses prior to the increase and the company concerned would not be in any worse position following the substitution than the Issuer was in before the event occurred which resulted in the Issuer being obliged to use reasonable endeavours to substitute in accordance with this provision.

- (ii) If the Issuer is unable to arrange such substitution before the relevant Shortfall Date, in the case of Condition 8(b)(i)(A) where there is a Charged Agreement, the Counterparty shall have the right, but not the obligation, in its sole discretion, under any Charged Agreement to pay to the Issuer such amounts as will enable it (after any such withholding, accounting or suffering) to pay (and in such event, the Issuer will be obliged to pay) to the Securityholders the amounts which they would have received in the absence of such withholding, accounting or suffering.

If the Issuer is unable to arrange such substitution before the relevant Shortfall Date in the case of Condition 8(b)(i)(B), the Counterparty shall have the right, but not the obligation, in its sole discretion, under any such Charged Agreement to accept a lesser payment from the Issuer in respect of the Charged Assets (after any such withholding or accounting or suffering of tax by the Issuer in respect of the Charged Assets).

If the event referred to in Condition 8(b)(i)(C) or (D) has occurred and there is a Charged Agreement, the Counterparty shall have the right, but not the obligation, before the Shortfall Date, to make additional payments to the Issuer so that the Issuer would not be in any worse position as a result of the occurrence of such event.

- (iii) If the Counterparty does not exercise such right as referred to in paragraph (ii) above, any such Charged Agreement will be terminated and the Securities redeemed as follows. The Selling Agent shall arrange for, and administer the sale of, the Charged Assets in accordance with the Agency Agreement in which case, upon the sale of the Charged Assets and receipt of the Realisation Amount, the Issuer shall give notice as soon as reasonably practicable to the Trustee and the Securityholders (which notice shall be irrevocable) of the date on which the Securities will be redeemed at the Early Redemption Amount.
- (iv) Notwithstanding the foregoing, if the requirement to withhold or account for any of the taxes referred to in this Condition arises:
  - (A) owing to any connection of any Securityholder with the taxing jurisdiction to which the Issuer is subject otherwise than by reason only of the holding of any Security or receiving principal, premium or interest in respect thereof; or
  - (B) by reason of the failure by the relevant Securityholder to comply with any applicable procedures required to establish non-residence or other similar claim for exemption from such tax; or

- (C) where such withholding or deduction is imposed on payment to an individual and is required to be made pursuant to European Council Directive 2003/48/EC or any law implementing or complying with, or introduced in order to conform to, such Directive; or
- (D) (if applicable) in circumstances which could have been avoided if the relevant Securityholder presented the relevant Security to another Paying Agent in a Member State of the European Union,

then to the extent it is able to do so, the Issuer shall deduct such taxes from the amounts payable to such Securityholder and the provisions of the preceding paragraph shall not apply. Any such deduction shall not constitute an Event of Default under Condition 11 (*Events of Default*).

(c) **Mandatory Redemption**

(i) ***Following Default under the Charged Assets or termination of a Charged Agreement***

Subject to Condition 4(b)(iii) (*Charged Assets - Substitution with Cash Collateral*):

- (A) if there has been a payment default in respect of the Charged Assets, or any one or more of the Charged Assets, as the case may be (having taken into account any applicable grace period); or
- (B) if the Charged Agreements are terminated (in whole but not in part) for any reason other than as a consequence of any specific Conditions relating to redemption of the Securities; or
- (C) if any of the Charged Assets (or amounts due pursuant thereto) become capable of being declared due and payable (without taking into account for this purpose any grace period under any terms in effect) prior to their stated date of maturity or other date or dates for their repayment by reason of any event of default (howsoever described) thereunder; or
- (D) if any obligor under the Charged Assets stops or threatens to stop payment of, or is unable to, or admits inability to, pay, its debts (or any class of its debts) as they fall due, or is deemed unable to pay its debts pursuant to or for the purposes of any applicable law, or if any order is made by any competent court or any resolution passed for the winding-up or dissolution of such obligor or if proceedings are initiated against such obligor under any applicable liquidation, insolvency, composition, reorganisation or other similar laws or any analogous proceedings or such obligor is adjudicated or found bankrupt or insolvent,

the Issuer shall give notice thereof to the Trustee, the Securityholders and the Selling Agent.

Thereupon, the Selling Agent shall arrange for, and administer the sale of, all of the Charged Assets in accordance with the Agency Agreement and, if applicable, Condition 8(c)(iv) (*Liquidation of Charged Assets*) below, in which case, upon sale of all of the Charged Assets and receipt of the Realisation Amount, the Issuer shall give notice as soon as reasonably practicable to the Trustee and the Securityholders (which notice shall be irrevocable) of the date on which the Securities will be redeemed at the Early Redemption Amount and the Charged Agreement(s) will be terminated.

(ii) ***Following Early Redemption of the Charged Assets***

Subject to Condition 4(b)(iii) (*Charged Assets - Substitution with Cash Collateral*), where any one or more of the Charged Assets in relation to a Series of Securities are redeemed pursuant to an early unscheduled redemption of such Charged Assets prior to their stated date of maturity (other than by reason of a payment default), the Issuer shall give notice as soon as reasonably practicable to the Trustee, the Securityholders and the Selling Agent (which notice shall be irrevocable) of the date on which the net redemption proceeds of such Charged Assets shall be applied as specified in Condition 5 (*Application of proceeds*). The Issuer shall give notice as soon as reasonably practicable to the Trustee and the Securityholders (which notice shall be irrevocable) of the date on which the Securities will be redeemed at the Early Redemption Amount and the Charged Agreement(s) will be terminated. In such circumstances, in relation to any Charged Assets not so redeemed, the Selling Agent shall arrange for, and administer the sale of, such Charged Assets (and the Issuer shall give notice of the Realisation Amount relating thereto in accordance with the provisions set out in Condition 8(c)(i) above, which, for the avoidance of doubt, shall be applied on the same date as, and together with, the net redemption proceeds received in relation to the redeemed Charged Assets as specified in Condition 5 (*Application of Proceeds*)). In the event of an early unscheduled redemption of the Initial Charged Assets prior to their stated date of maturity (other than by reason of a payment default) prior to the delivery by the Vendor of all or any part of the Initial Charged Assets, any undelivered Initial Charged Assets shall be deemed to have been delivered by the Vendor to the Issuer and sold by the Selling Agent in accordance with the Agency Agreement. In the event that the deemed proceeds of the sale of such undelivered Initial Charged Assets are less than the amount of cash held in the Cash Deposit Account at such time, the Selling Agent, on behalf of the Issuer, shall pay any such difference to the Vendor as soon as reasonably practicable thereafter. Each Security will thereafter be redeemed on a *pro rata* basis of the aggregate amount allocated to the Securityholders.

(iii) ***Following Event of Default under the Swap Agreement with Counterparty as Defaulting Party***

Subject to Condition 4(b)(iii) (*Charged Assets - Substitution with Cash Collateral*), if there has been an Event of Default under and as defined in the Swap Agreement and the Counterparty is the Defaulting Party (as defined in the Swap Agreement), the Issuer shall give notice thereof to the Securityholders, the Selling Agent and the Trustee. At any time at which the Event of Default under and as defined in the Swap Agreement is continuing (having taken into account any applicable grace period), (a) the Securityholders may instruct the Issuer by way of Extraordinary Resolution (with a copy to the Trustee and the Selling Agent) or (b) the Selling Agent (provided it is a Replacement Selling Agent) may instruct the Issuer (with a copy to the Trustee and the Securityholders) (i) to terminate the Swap Agreement and (ii) to redeem the Securities in accordance with this Condition 8(c)(iii). Thereupon, the Selling Agent shall (i) terminate the Swap Agreement on behalf of the Issuer and (ii) arrange for, and administer the sale of, all of the Charged Assets in accordance with the Agency Agreement and, if applicable, Condition 8(c)(iv) (*Liquidation of Charged Assets*) below. Upon sale of all of the Charged Assets and receipt of the Realisation Amount, the Issuer shall give notice as soon as reasonably practicable to the Trustee and the Securityholders (which notice shall be irrevocable) of the date on which the Securities will be redeemed at the Early Redemption Amount.

(iv) ***Liquidation of Charged Assets***

In the event of a payment default in respect of the Initial Charged Assets prior to the delivery by the Vendor of all or any part of the Initial Charged Assets, any undelivered Initial Charged Assets shall be deemed to have been delivered by the Vendor to the Issuer and sold

by the Selling Agent in accordance with the Agency Agreement. In the event that the deemed proceeds of the sale of such undelivered Initial Charged Assets are less than the amount of cash held in the Cash Deposit Account at such time, any such difference shall be paid to the Vendor as soon as reasonably practicable thereafter.

(v) ***General***

Once the net proceeds of sale or redemption of the Charged Assets have been applied in accordance with this Condition, failure to make any further payment due in respect of a mandatory redemption of part of the principal amount of the Securities or interest thereon or any termination payment under any Charged Agreement shall not constitute an Event of Default.

(d) **Redemption at the option of the Issuer**

- (i) The Issue Terms may specify that the Issuer has the option to redeem all or some of the Securities on the Optional Call Redemption Date(s) at the Optional Call Redemption Amount together with interest to (but excluding) the date of redemption.
- (ii) The Issuer may only exercise such option by giving notice to the Securityholders, the Trustee, the Counterparty (if any) and the Principal Paying Agent within the Issuer's Option Period (as specified in the Issue Terms).
- (iii) In the case of a partial redemption of the Securities, the Securities to be redeemed will be selected individually by lot (where the Securities are in definitive form) or in accordance with the rules of the Clearing Systems (where the Securities are in global form) (to be reflected in the records of Euroclear and Clearstream, Luxembourg as either a pool factor or a reduction in the nominal amount, at their discretion).

(e) **Redemption at the option of the Securityholders**

- (i) The Issue Terms may specify that the Issuer shall, at the option of the Securityholders (either individually or acting together, subject to a minimum percentage of all the Securityholders, as specified in the Issue Terms), redeem all or some of the Securities on the Optional Put Redemption Date at the Optional Put Redemption Amount, together with interest to (but excluding) the date of redemption.
- (ii) A Securityholder may only exercise such option by giving notice to the Issuer within the Securityholder's Option Period (as specified in the Issue Terms). If the Securities are in definitive form, the Securityholder must deposit the relevant Security at the specified office of a Paying Agent together with a duly completed and signed notice of exercise (the "**Put Notice**"). If the Securities are represented by a Global Security, to exercise the right to require redemption of the Security the Securityholder must, within the notice period, give notice of such exercise in accordance with the standard procedures of the Clearing Systems (to be reflected in the records of Euroclear and Clearstream, Luxembourg as either a pool factor or a reduction in the nominal amount, at their discretion, and which may include notice being given on his instruction by the Clearing Systems or any Common Service Provider for them to the Principal Paying Agent by electronic means) in a form acceptable to the Clearing Systems from time to time.
- (iii) Any Put Notice shall be irrevocable except where, prior to the due date of redemption, an Event of Default shall have occurred and be continuing and the Trustee shall have declared the Securities due and repayable. In such event, a Securityholder may, at its option, elect to withdraw the Put Notice.

(f) **Redemption of Zero Coupon Securities**

- (i) For the purpose of this Condition 8 (*Redemption*) and Condition 11 (*Events of Default*), each Zero Coupon Security will be redeemed at an amount (the "**Amortised Face Amount**") calculated in accordance with the following formula:

$$\text{Amortised Face Amount} = \text{RP} \times (1 + \text{AY})^y$$

where:

"RP" means the Reference Price;

"AY" means the Accrual Yield expressed as a decimal; and

"y" is a fraction the numerator of which is equal to the number of days (calculated on the basis of a 360-day year consisting of 12 months of 30 days each) from (and including) the Issue Date of the first Tranche of the Securities to (but excluding) the date fixed for redemption or (as the case may be) the date upon which such Security becomes due and repayable and the denominator of which is 360,

or on such other calculation basis as may be specified in the Issue Terms.

- (ii) If the amount payable in respect of any Zero Coupon Security upon redemption of such Zero Coupon Security pursuant to this Condition 8 (*Redemption*) or upon its becoming due and repayable as provided in Condition 11 (*Events of Default*) is improperly withheld or refused, the amount due and repayable in respect of such Zero Coupon Security shall be the amount calculated as provided in sub-paragraph (i) above as though the references therein to the date fixed for the redemption or the date upon which such Zero Coupon Security becomes due and payable were replaced by references to the date which is the earlier of:

- (A) the date on which all amounts due in respect of such Zero Coupon Security have been paid; and
- (B) 5 days after the date on which the full amount of the moneys payable in respect of such Zero Coupon Securities has been received by the Agent or the Trustee and notice to that effect has been given to the Securityholders in accordance with Condition 15 (*Notices*).

(g) **Cancellation**

All Securities redeemed early or purchased by the Issuer pursuant to the Issue Terms shall be cancelled and may not be reissued or resold.

**9. PURCHASE**

- (a) The Issue Terms will specify whether the Issuer may, through the Counterparty or an Affiliate, provided that no Event of Default has occurred and is continuing, purchase the Securities (or any of them) at any time in the open market or otherwise at any price. The Issuer shall not purchase any definitive Bearer Security unless it purchases all unmatured Coupons (if any) in respect of such Bearer Security.
- (b) On any such purchase the Charged Agreements (or a proportionate part thereof which corresponds to the Securities to be purchased) will be terminated. The Trust Instrument provides that the security

over the Mortgaged Property (or a proportionate part thereof) will be released against receipt by the Trustee of the net proceeds of the realisation of such Mortgaged Property.

- (c) No interest will be payable with respect to a Security purchased in respect of the period from the Issue Date or the previous Interest Payment Date, as the case may be, to the date of such purchase.
- (d) On a purchase under this Condition of a proportion of the Securities, the Calculation Agent shall, subject to Rating Agency Confirmation (from S&P only and only in the case of Securities that are rated by S&P) but without the consent of any other person, make such amendments as are necessary to preserve the economic equivalence of the remaining Securities including without limitation, any consequential amendments to the Notional Amount, and, in the case of Securities that are rated, notify the Rating Agencies of such amendments.

## **10. PAYMENTS**

- (a) Payments of principal and premium (if any) in respect of Bearer Securities or a Bearer Global Security will be made at the specified office of any of the Paying Agents against surrender (or, in the case of partial payment, presentation) of the Bearer Securities or the Bearer Global Security, as the case may be. Payments of interest, if applicable, in respect of Bearer Securities or a Bearer Global Security due on an Interest Payment Date will be made at the specified office of any of the Paying Agents outside the United States (which expression, as used herein, means the United States of America (including the States thereof, the District of Columbia and the territories, possessions and other areas subject to the jurisdiction of the United States of America)), subject as provided in subparagraph (c) below, against surrender (or, in the case of partial payment, presentation) of the relevant Coupons or, as applicable, against presentation of the Bearer Global Security.

Such payments shall be made by a cheque payable in the Currency of Issue drawn on, or, at the option of the holder, by transfer to an account denominated in the Currency of Issue with, a bank in the city specified in the Issue Terms as the place of payment, or, in the case of the euro, a city in which banks have access to the Target2 System, subject in all cases to any fiscal or other laws and regulations applicable in the place of payment.

The Paying Agent to which a Bearer Global Security shall have been presented for payment shall instruct Euroclear and Clearstream, Luxembourg to make appropriate entries in their records in respect of such Bearer Global Security.

As long as Bearer Securities are represented by a Bearer Global Security, each of the persons shown in the records of the Clearing Systems as the holder of a Bearer Security must look solely to the Clearing Systems for his share of each payment so made by the Issuer to the bearer of the Bearer Global Security, subject to and in accordance with the respective rules and procedures of the Clearing Systems.

Such persons shall have no claim directly against the Issuer in respect of payments due on the Bearer Securities for so long as the Bearer Global Security is outstanding. The Issuer will be discharged by payment to the bearer of the Bearer Global Security in respect of each amount so paid.

Notwithstanding the foregoing, payments on a Temporary Bearer Global Security due prior to the Exchange Date will only be made upon certification as to non-U.S. beneficial ownership as required by U.S. Treasury regulations. No payments due after the Exchange Date will be made on the Temporary Bearer Global Security.

- (b) Each Bearer Security should be presented for payment together with, if applicable, all unmatured related Coupons. If any Bearer Security in respect of a Fixed Rate Security is presented for payment without, if applicable, all unmatured related Coupons (not being a Talon), the full amount of any such missing unmatured Coupon (or, in the case of payment not being made in full, that proportion



of the full amount in the Currency of Issue of such missing unmatured Coupon which the sum of principal so paid bears to the total amount of principal due) will be deducted from the principal amount due for payment. Any amount of principal so deducted will be paid in the manner mentioned above against surrender of the relative missing Coupon at any time thereafter but before the expiry of a period of 10 years from the Relevant Date (as defined in Condition 13 (*Prescription*)) for the payment of such principal (whether or not such Coupon would otherwise have become void pursuant to Condition 13 (*Prescription*)) or, if later, 5 years from the date for payment stated on such Coupon, but not thereafter. All (if any) unmatured Talons and all unmatured Coupons appertaining to a Floating Rate Security or Indexed Interest Security (whether or not attached to the relative Bearer Security) shall become void upon the date on which such Bearer Security becomes due and repayable and no payment or exchange shall be made in respect thereof.

- (c) No payments of principal and/or interest in respect of Bearer Securities denominated in U.S. dollars will be made at the specified office of any Paying Agent in the United States. Notwithstanding the foregoing, such payments of principal and/or interest will be made at the specified office of any Paying Agent in the United States if:
- (i) the Issuer has appointed Paying Agents with specified offices outside the United States with the reasonable expectation that such Paying Agents would be able to make payment in U.S. dollars at such specified offices outside the United States of the full amount of principal and interest on such Securities in the manner provided above when due;
  - (ii) payment of the full amount of such principal and interest at all such specified offices outside the United States is illegal or effectively precluded by exchange controls or other similar restrictions on the full payment or receipt of principal and interest in U.S. dollars; and
  - (iii) such payment is then permitted under United States law without involving, in the opinion of the Issuer, adverse tax consequences to the Issuer.

If no appointment of a Paying Agent with a specified office in the United States is then in effect, the Issuer shall appoint a Paying Agent with a specified office in New York City at which such payments will be made. Notice of any termination or appointment of a Paying Agent and of any changes in the specified offices of the Paying Agents will be given to the Securityholders in accordance with Condition 15 (*Notices*).

- (d) After all the Coupons attached to or issued in respect of a definitive Bearer Security have matured, further Coupons and, where applicable, one further Talon will (subject to Condition 13 (*Prescription*)) be issued against surrender of the relevant Talon at the specified office of any Paying Agent.
- (e) If the due date for payment of any amount of principal, premium (if any) or, if applicable, interest in respect of any Security is not a Payment Day, the holder of such Security shall not be entitled to payment until the next following Payment Day and shall not be entitled to any further interest or other payment in respect of any such delay. If a Security is presented for payment at a time when, as a result of differences in time zones, it is not practicable to transfer the relevant amount to an account for value on the date of presentation, the Issuer shall not be obliged so to do but shall be obliged to transfer the relevant amount to such account for value on the first practicable date after the date of presentation.
- (f) Subject as provided in this Condition 10 (*Payments*):
- (i) payments in a Currency of Issue other than euro will be made by credit or transfer to an account in the relevant Currency of Issue maintained by the payee with, or, at the option of the payee, by a cheque in such Currency of Issue drawn on, a bank in the principal financial

centre of the country of such Currency of Issue (which, if the Currency of Issue is Australian dollars or New Zealand dollars, shall be Sydney and Auckland, respectively); and

- (ii) payments in euro will be made by credit or transfer to a euro account (or any other account to which euro may be credited or transferred) specified by the payee or, at the option of the payee, by a euro cheque.

Payments will be subject in all cases to any fiscal or other laws and regulations applicable to such payments in the place of payment.

- (g) Unless otherwise specified in the Issue Terms, any reference in the Conditions to principal in respect of the Securities shall be deemed to include, as applicable:
  - (i) any additional amounts which the Counterparty (if any) may elect to pay to the Issuer with respect to principal under Condition 8(b) (*Redemption for taxation reasons*);
  - (ii) the Final Redemption Amount of the Securities;
  - (iii) the Early Redemption Amount of the Securities;
  - (iv) the Optional Call Redemption Amount(s) (if any) or Optional Put Redemption Amount(s) of the Securities;
  - (v) in relation to Zero Coupon Securities, the Amortised Face Amount; and
  - (vi) any premium and any other amounts (other than interest) which may be payable by the Issuer under or in respect of the Securities.

Any reference in the Conditions to interest in respect of the Securities shall be deemed to include, as applicable, any additional amounts which the Counterparty may elect to pay with respect to interest under Condition 8(b) (*Redemption for taxation reasons*).

## 11. EVENTS OF DEFAULT

Upon the occurrence of an Event of Default, the Trustee at its discretion may, and, if requested by the Instructing Creditor, shall (subject to being indemnified to its satisfaction), give notice to the Issuer that the Securities are, and they shall accordingly immediately become, due and repayable at the Early Redemption Amount. The Security shall become enforceable (as provided in the Trust Instrument) and the proceeds of realisation of such Security shall be applied as specified in Condition 5 (*Application of proceeds*).

**"Event of Default"** means any of the following events:

- (a) if default is made for a period of 14 days or more in the payment of any sum due in respect of the Securities or any of them; or
- (b) if (i) the Issuer fails to perform or observe any of its other obligations under the Securities or the Trust Instrument, (ii) the breach of which obligation the Trustee shall have certified to be in its opinion materially prejudicial to the interests of the Securityholders and (iii) where in the opinion of the Trustee such failure is capable of remedy and such failure continues for a period of 30 days (or such longer period as the Trustee may permit) following the service by the Trustee on the Issuer of notice requiring the same to be remedied; or
- (c) if any order shall be made by any competent court or any resolution passed for the winding-up or dissolution of the Issuer other than for the purposes of amalgamation, merger,

consolidation, reorganisation or other similar arrangements on terms approved by the Trustee.

## **12. ENFORCEMENT**

At any time after the Securities (or any of them) shall have become immediately due and repayable and have not been repaid, the Trustee may, at its discretion and without further notice, and if requested by the Instructing Creditor shall (subject to being indemnified to its satisfaction), institute such proceedings against the Issuer as it may think fit to enforce repayment thereof and to enforce the provisions of the Trust Instrument.

No Securityholder shall be entitled to proceed against the Issuer unless the Trustee, having become bound so to proceed, fails so to do within a reasonable time and such failure is continuing. After realising the security which has become enforceable and distributing the net proceeds in accordance with Condition 5 (*Application of Proceeds*), the obligations of the Issuer with respect to the Trustee, the Counterparty (if any) and the Securityholders shall be satisfied.

Neither the Trustee nor the Counterparty (if any) nor any Securityholder may take any further steps against the Issuer to recover any further sums in respect thereof, and the right to receive any such sums shall be extinguished. In particular, neither the Trustee nor the Counterparty (if any) nor any Securityholder shall be entitled in respect thereof to petition or to take any other steps for the winding-up of the Issuer nor shall any of them have any claim in respect of the Mortgaged Property for any other Series.

The Relevant Sums (as defined in Condition 6(c)(i)) may be insufficient to pay all amounts due to, among others, the Trustee, the Counterparty (if any) and the Securityholders. The other assets (if any) of the Issuer including, in particular, assets securing other series of Securities will not be available to make up any shortfall.

## **13. PRESCRIPTION**

Claims under the Bearer Securities, the Bearer Global Securities and, if applicable, the Coupons (which for this purpose shall not include Talons) will be prescribed and become void unless the same are presented for payment within a period of 10 years in the case of principal or premium (if any) and 5 years in the case of interest from the Relevant Date relating thereto. Talons may not be exchanged for Coupons which would be void on issue.

For this purpose, the "**Relevant Date**" means the date on which the payment in respect of the Security or the Coupon first becomes due and payable. However, if the full amount of the moneys payable on such date has not been received by the Principal Paying Agent or the Trustee on or prior to such date, the "**Relevant Date**" means the date on which such moneys shall have been so received and notice to that effect shall have been given to the Securityholders in accordance with Condition 15 (*Notices*).

## **14. REPLACEMENT OF SECURITIES**

If any Security is lost, stolen, mutilated, defaced or destroyed it may be replaced, subject to applicable laws, regulations and Stock Exchange or other relevant authority rules or regulations, at the specified office of the Principal Paying Agent (or such other place of which notice shall have been given in accordance with Condition 15 (*Notices*)). Such replacement is subject to payment by the claimant of the expenses incurred in connection therewith and on such terms as to evidence and indemnity as the Issuer may reasonably require. Mutilated or defaced Securities must be surrendered before replacements will be issued.

## 15. NOTICES

All notices regarding Securities represented by a Bearer Global Security will be valid if (i) published (A) in one leading London daily newspaper or, if this is not possible, in one other English language daily newspaper approved by the Trustee with general circulation in Europe and (B) if and for so long as the Securities are listed on the Luxembourg Stock Exchange and the rules of that Stock Exchange so require, in one daily newspaper published in Luxembourg approved by the Trustee and (C) if and for so long as the Securities are listed on the Irish Stock Exchange and the Irish Stock Exchange so requires, in one daily newspaper published in Ireland approved by the Trustee or (ii) delivered to the Common Service Provider for communication by the Clearing Systems to the Securityholders and, to the extent required under the provisions of the Market Abuse (Directive 2003/6/EC) Regulations 2005, filed with the Companies Announcement Office of the Irish Stock Exchange. Any notice delivered to a Common Service Provider as aforesaid shall be deemed to have been given on the day of such delivery. It is expected that such publication will be made in (i) the *Financial Times* and (as the case may be) (ii) the *d'Wort* or *Tageblatt* and/or (iii) the *Irish Times*.

All notices regarding Securities represented by Bearer Securities in definitive form will be valid if published in accordance with option (i) in the above paragraph.

The Issuer shall also ensure that notices are duly published in a manner which complies with the rules and regulations of any other Stock Exchange on which the Securities are for the time being listed.

Any notice published in a newspaper as aforesaid shall be deemed to have been given on the date of such publication or, if published more than once, on the date of the first such publication. If publication is not practicable in any such newspaper as is mentioned above, notice will be valid if given in such other manner, and shall be deemed to have been given on such date, as the Trustee shall determine.

## 16. AGENTS

The Issue Terms will specify the relevant Agents for an issue of a Series of Securities. The duties of each of the Agents shall be as specified in the Trust Instrument, the Agency Agreement and in the Issue Terms in respect of the Securities.

Subject to the following paragraph, the Issuer reserves the right, subject to the approval of the Trustee and the Counterparty (if any), at any time to vary or terminate the appointment of any Agent and to appoint additional or other Agents provided that it will at all times maintain Agents as specified in the Issue Terms.

Upon the occurrence of a Selling Agent Default, a Calculation Agent Default and/or an Agent Bank Default in respect of the Selling Agent, the Calculation Agent or the Agent Bank, as the case may be, the Issuer may appoint a Replacement Selling Agent, a Replacement Calculation Agent and/or a Replacement Agent Bank, as the case may be, pursuant to Condition 17 (*Appointment of Replacement Selling Agent, Replacement Calculation Agent and Replacement Agent Bank*).

## 17. APPOINTMENT OF REPLACEMENT SELLING AGENT, REPLACEMENT CALCULATION AGENT AND REPLACEMENT AGENT BANK

- (a) Upon the occurrence of a Selling Agent Default, a Calculation Agent Default and/or an Agent Bank Default, the Issuer may (or shall if instructed by means of an Extraordinary Resolution of the Securityholders or by the Trustee) (x) terminate, with immediate effect, the appointment of the Selling Agent, the Calculation Agent or the Agent Bank, as the case may be, and (y) at no additional cost to the Issuer, appoint a Replacement Selling Agent, a Replacement Calculation Agent and/or a Replacement Agent Bank, as the case may be, provided that (i) the relevant Extraordinary

Resolution or direction from the Trustee, as applicable, specifies the Replacement Selling Agent, Replacement Calculation Agent and/or Replacement Agent Bank, as the case may be, to be appointed, (ii) the Replacement Selling Agent, Replacement Calculation Agent and/or Replacement Agent Bank, as the case may be, is appointed on substantially the same terms as the Selling Agent, the Calculation Agent or the Agent Bank, as the case may be, is appointed under the Agency Agreement (other than any fee arrangements which may be agreed from time to time with the Securityholders by the Replacement Selling Agent, a Replacement Calculation Agent and/or a Replacement Agent Bank, as the case may be, and notified, as soon as reasonably practicable, to the Issuer in writing, but which shall not for the avoidance of doubt include any fee arrangements that would affect the Security Ranking Basis from time to time), (iii) the Replacement Selling Agent, Replacement Calculation Agent and/or Replacement Agent Bank, as the case may be, has the ability, experience and qualifications necessary to professionally and competently perform the duties required of the Selling Agent, the Calculation Agent or the Agent Bank, as the case may be, and (iv) the Replacement Selling Agent, Replacement Calculation Agent and/or Replacement Agent Bank, as the case may be, agrees to be appointed in accordance with this Condition and is able to be so appointed by the Issuer.

- (b) If the Issuer fails (if instructed by means of an Extraordinary Resolution of the Securityholders or by the Trustee) to (x) terminate, with immediate effect, the appointment of the Selling Agent, the Calculation Agent or the Agent Bank, as the case may be, and/or (y) appoint a Replacement Selling Agent, a Replacement Calculation Agent and/or a Replacement Agent Bank, as the case may be, in accordance with paragraph (a) above, within 30 calendar days from receipt of the relevant instruction of the Trustee or Extraordinary Resolution, the Trustee may (x) terminate, with immediate effect, the appointment of the Selling Agent, the Calculation Agent or the Agent Bank, as the case may be, and/or (y) appoint a Replacement Selling Agent, a Replacement Calculation Agent and/or a Replacement Agent Bank, as the case may be, in accordance with paragraph (a) above, on behalf of the Issuer.

## **18. RESTRICTIONS**

So long as any of the Securities remains outstanding, the Issuer will not, without the written consent of the Trustee and the Counterparty (if any):

- (a) engage in any activity or do anything whatsoever, except:
  - (i) issue Securities and issue or, as the case may be, enter into Alternative Investments subject to a maximum aggregate principal amount outstanding at any time of U.S.\$50,000,000,000 (or its equivalent in other currencies);
  - (ii) acquire and own Charged Assets or any assets used to secure any Debt Investments and exercise its rights and perform its obligations in respect thereof;
  - (iii) enter into and perform its obligations under the Transaction Documents;
  - (iv) enforce any of its rights under the Transaction Documents, any Securities or the Mortgaged Property relating to any Series;
  - (v) as permitted by sub-paragraph (b) below; and
  - (vi) perform any act incidental to or necessary in connection with any of the above, including without limitation, entering into any swap, option or forward foreign exchange agreement in connection with the issue of Securities;

- (b) have any Subsidiaries except, if the Issuer has issued rated Securities, with the written consent of S&P (in the case of Securities rated by S&P) and with prior notification to Moody's (in the case of Securities rated by Moody's) and, in any event, only Subsidiaries:
  - (i) which are wholly owned by the Issuer;
  - (ii) whose share capital is fully paid up by the Issuer;
  - (iii) whose activities are limited to the same extent as those of the Issuer under the Trust Instrument (including, without limitation, the terms of any securities or other debt instruments issued or loans entered into, by such Subsidiary being required to be on substantially the same terms as those of the Securities); and
  - (iv) in respect of whose activities the Issuer will have no liability;
- (c) subject to sub-paragraph (a) above, dispose of any of its property or other assets or any part thereof or interest therein (otherwise than in accordance with Condition 9 (*Purchase*));
- (d) create or permit within its control to subsist any charge, mortgage, lien or other encumbrance over the Mortgaged Property other than the Security Interests in respect of all Series of Securities of the Issuer;
- (e) have any employees;
- (f) declare any dividends or make any distributions of any other kind;
- (g) issue any further shares;
- (h) take any action which would lead to the dissolution, liquidation or winding up of itself or to the amendment of its constitutional documents; or
- (i) perform such other activities as are expressly restricted in the Trust Instrument.

## 19. MEETINGS OF SECURITYHOLDERS, MODIFICATION, WAIVER AND SUBSTITUTION

The Trust Instrument contains provisions for convening meetings of Securityholders to consider any matter affecting their interests, including the modification by Extraordinary Resolution of the Issue Terms or other provisions of the Trust Instrument. The quorum at any such meeting for passing an Extraordinary Resolution will be one or more persons holding or representing in aggregate not less than  $66\frac{2}{3}$  per cent. in Outstanding Principal Amount of the Securities for the time being outstanding, or at any adjourned such meeting one or more persons being or representing Securityholders whatever the Outstanding Principal Amount of the Securities so held or represented. An Extraordinary Resolution passed at any meeting of Securityholders or in the form of a written resolution (as described in the Trust Instrument) will be binding on all Securityholders, whether or not they are present at the meeting.

The Trustee may agree, without the consent of the Securityholders (but, in the case of Securities which are rated, subject to (in the case of Securities rated by S&P) Rating Agency Confirmation from S&P and/or (in the case of Securities rated by Moody's) prior notification to Moody's), to any modification of, or to any waiver or authorisation of any breach or proposed breach of, any of the Issue Terms or any other Transaction Document as set out in the next sentence and as more fully set out in the Trust Instrument. The Trustee may so agree if, in the opinion of the Trustee, any such modification, waiver or authorisation is not materially prejudicial to the interests of the Securityholders or any modification of, or waiver or authorisation of any breach or proposed breach

as aforesaid is of a formal, minor or technical nature or to correct a manifest or (to the satisfaction of the Trustee) proven error. No such modification shall be effective without the consent of the Counterparty (if any) (such consent not to be unreasonably withheld or delayed). Notwithstanding the foregoing, the Trustee shall agree to make any modification (whether or not it may be materially prejudicial to the Securityholders) requested by the Dealer in respect of a Series of Securities if, and to the extent that, such modification is to correct an error in the Issue Terms arising from a discrepancy between the Issue Terms and the final termsheet, as certified by the relevant Dealer in form and content satisfactory to the Trustee.

Subject as provided in the Trust Instrument, the Trustee, if it is satisfied that it would not be materially prejudicial to the interests of the Securityholders, may agree, without the consent of the Securityholders (but, in the case of Securities which are rated, subject to (in the case of Securities rated by S&P) Rating Agency Confirmation (from S&P only) and/or prior notification to Moody's (in the case of Securities rated by Moody's)), to the substitution of any other company in place of the Issuer as principal debtor under the Securities, the Trust Instrument and the Transaction Documents. No such substitution shall be effective without the consent of the Counterparty (if any) (such consent not to be unreasonably withheld or delayed). Under the Trust Instrument, the Trustee may require the Issuer to use its reasonable endeavours to procure the substitution as principal debtor of a company incorporated in some other jurisdiction than that of the Issuer upon the occurrence of one of the events referred to in Condition 8(b)(i) (*Redemption for taxation reasons*).

In connection with any exercise of its trusts, powers, authorities or discretions, the Trustee shall not have regard to the consequences of such exercise for individual Securityholders resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory. In connection with any such exercise, no person shall be entitled to claim, whether from the Issuer, any substitute Issuer, the Counterparty (if any), the Trustee or any other person, any indemnification or payment in respect of any tax consequence of any such exercise upon any person.

Any such modification, waiver, authorisation or substitution shall be binding on the Counterparty (if any) and all Securityholders and (if the Securities are listed and the Stock Exchange so requires) the Stock Exchange and, unless the Trustee agrees otherwise, any such modification or substitution shall be notified to the Securityholders by the Issuer as soon as practicable thereafter.

## 20. FURTHER ISSUES

The Issuer shall be at liberty from time to time, without the consent of the Securityholders (but subject to the consent of the Counterparty (if any) in the case of (a) below), to create and issue further securities either:

- (a) so as to be consolidated and form a single Series with the Securities (such further Securities, the "**Further Fungible Securities**"), provided that the Issuer provides additional Charged Assets as security for the original issue of Securities and any Further Fungible Securities either on a Nominal Basis or a Market Value Basis as specified in the Issue Terms and enters into an additional or supplemental Charged Agreement(s) (if applicable) (and references to "**Securities**", "**Charged Assets**" and "**Charged Agreements**" shall thereafter be deemed to be references to such terms as amended to take into account the further issue); or
- (b) to form a separate Series from the Securities upon such terms as to security, interest, premium, redemption and otherwise as the Issuer may, in its absolute discretion, at the time of the issue thereof determine.

Any such securities shall be constituted in accordance with the Trust Instrument. The Trust Instrument contains provisions for convening a single meeting of the Securityholders and the holders of securities of other Series in certain circumstances where the Trustee so decides.

In addition, such Further Fungible Securities, when issued, shall preserve the economic equivalence of the existing Securities and the Calculation Agent shall, subject to Rating Agency Confirmation in the case of Securities that are rated, but without the consent of any other person, make such amendments as are necessary, including without limitation, any consequential amendments to the Notional Amount.

**21. LIABILITIES AND INDEMNIFICATION OF THE TRUSTEE**

The Trust Instrument contains provisions for the indemnification of the Trustee and for its relief from responsibility, including provisions relieving it from taking proceedings unless indemnified to its satisfaction. The Trustee is entitled to enter into business transactions with the Issuer, the Counterparty (if any), any obligor in respect of the Charged Assets or any of their subsidiary or associated companies without accounting for any profit resulting therefrom.

The Trustee is exempted from any liability in respect of any loss or theft of the Mortgaged Property, from any obligation to insure the Mortgaged Property and from any claim arising from the fact that the Mortgaged Property is held in a clearing system or in safe custody by a bank or other custodian. The Trust Instrument also provides that the Trustee shall accept without investigation, requisition or objection such right, benefit, title and interest, if any, as the Issuer may have in and to any of the Mortgaged Property and is not bound to make any investigation into the same or into the Mortgaged Property in any respect.

The Trustee shall not be bound or concerned to make any investigation into the creditworthiness of any obligor in respect of the Mortgaged Property, the validity of any such obligor's obligations under or in respect of the Mortgaged Property or any of the terms of the Charged Assets (including, without limitation, whether the cashflows from the Charged Assets and the Securities are matched) or to monitor the value of any Charged Assets.

**22. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No person shall have any right to enforce any term or condition of this Security under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of any person which exists or is available apart from that Act.

**23. GOVERNING LAW**

The Trust Instrument, the Securities and the Charged Agreement(s) and any non-contractual obligations arising out of or in connection with such agreements are governed by, and will be construed in accordance with, English law.

**24. JURISDICTION**

The Issuer has, in the Trust Instrument, irrevocably agreed for the benefit of the Trustee and the Securityholders that the courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the Trust Instrument, the Securities and the Charged Agreement(s) (including any proceedings relating to obligations arising out of or in connection with such agreements) and that accordingly any suit, action or proceedings (together referred to as "**Proceedings**") arising out of or in connection therewith (including any Proceedings relating to any non-contractual obligations arising out of or in connection therewith) may be brought in such courts.

The Issuer has, in the Trust Instrument, irrevocably waived any objection which it may have now or hereafter to the laying of the venue of any Proceedings in any such court and any claim that any such Proceedings have been brought in an inconvenient forum. The Issuer has further irrevocably agreed that a judgment in any Proceedings brought in the courts of England shall be conclusive and binding upon the Issuer and may be enforced in the courts of any other jurisdiction. Nothing contained in



this Condition shall limit any right to take Proceedings against the Issuer in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction, whether concurrently or not.

The Issuer has in the Trust Instrument appointed an agent in London for service of process in England in respect of any Proceedings and has undertaken that in the event of such person ceasing so to act it will appoint such other person as the Trustee may approve.

## **25. DEFINITIONS**

Capitalised terms used in these Conditions have the meanings given to them in the Definitions Module as modified and supplemented by the relevant Trust Instrument and/or Issue Terms.

**GENERAL DEFINITIONS MODULE**

**MARCH 2010 EDITION**

**to be incorporated by reference into  
the Conditions and the Trust Instrument  
for an issue of repackaged Securities  
arranged by  
MERRILL LYNCH INTERNATIONAL**

## 1. GENERAL DEFINITIONS

The following capitalised terms used in the Trust Instrument in respect of a Series of Securities into which this General Definitions Module is incorporated shall have the meanings set out below, except where the context otherwise requires or as may be modified and/or supplemented by the Issue Terms and/or Trust Instrument in respect of such Securities:

**"1940 Act"** means the United States Investment Company Act of 1940, as amended.

**"2000 ISDA Definitions"** means, in relation to a Series of Securities, the 2000 ISDA Definitions as published by ISDA and as amended and updated as at the Issue Date of the first Tranche of such Securities.

**"2006 ISDA Definitions"** means, in relation to a Series of Securities, the 2006 ISDA Definitions as published by ISDA and as amended and updated as at the Issue Date of the first Tranche of such Securities.

**"2002 ISDA Equity Derivatives Definitions"** means, in relation to a series of Equity-Linked Securities, the 2002 ISDA Equity Derivatives Definitions as published by ISDA and as amended and updated as at the Issue Date of the first Tranche of such Equity-Linked Securities.

**"Account Bank"** means, in relation to a Series of Securities, the entity (if any) appointed as such under the Agency Agreement and as specified in the Issue Terms.

**"Additional Agreement"** means, in relation to a Series of Securities, any agreements entered into by the Issuer other than the Trust Instrument, Agency Agreement, Charged Agreement(s), Sale Agreement, Placing Agreement and any Additional Charging Document.

**"Additional Charging Document"** means, in relation to a Series of Securities, any non-English law governed security document entered into by the Issuer for the purposes of granting security over or in respect of any part of the Mortgaged Property for such Series.

**"Affiliate"** has the meaning given to such term in the Swap Agreement.

**"Agency Agreement"** means, in relation to a Series of Securities, the agency agreement entered into by, among others, the Issuer, the Trustee and the Agents in respect of such Series by execution of the relevant Trust Instrument and into which the terms of the Agency Terms Module are incorporated by reference, as the same may be modified and supplemented by the Trust Instrument.

**"Agency Terms Module"** means the Agency Terms Module (July 2009 Edition) containing the standard agency and custodian provisions for an issue of Securities or such other edition as specified in the Issue Terms.

**"Agent Bank"** means, in relation to a Series of Securities, the entity (if any) appointed as such under the Agency Agreement and as specified in the Issue Terms, and includes any Replacement Agent Bank.

**"Agent Bank Default"** means, in relation to the Agent Bank, the Agent Bank or any of its Affiliates also acts as the Counterparty in relation to the relevant Series of Securities and, having taken into account any applicable grace period, an Event of Default (as defined in the Swap Agreement) has occurred under the Swap Agreement and the Counterparty is the Defaulting Party (as defined in the Swap Agreement).

**"Agents"** means, in relation to a Series of Securities, each of the agents of the Issuer appointed under the Agency Agreement and as specified in the Issue Terms and, for the avoidance of doubt, includes any Replacement Selling Agent, Replacement Calculation Agent and Replacement Agent Bank.

**"Alternative Investments"** means any indebtedness in respect of moneys borrowed or raised by the Issuer (other than in the form of Securities) on terms similar to the Securities (in particular as to limited recourse and extinguishment of claims) and includes, without limitation, loans, loan certificates and schuldscheine.

**"Appointee"** means any attorney, manager, agent, delegate, receiver or other person appointed by the Trustee or by another Appointee under the Trust Instrument.

**"Arranger"** means Merrill Lynch International.

**"Auditors"** means, in relation to an Issuer, the auditors (if any) for the time being of such Issuer or, in the event of their being unable or unwilling promptly to carry out any action requested of them pursuant to the provisions of the Trust Instrument, such other firm of accountants as may be nominated or approved by the Trustee.

**"Authorised Denomination"** means U.S.\$250,000 and integral multiples of U.S.\$1 in excess thereof.

**"Bearer Global Security"** means a Temporary Bearer Global Security and/or a Permanent Bearer Global Security, as the context may require.

**"Bearer Securities"** means those Securities which are for the time being in bearer form.

**"Bearer Securities Base Conditions Module"** means the Bearer Securities Base Conditions Module (July 2009 Edition) containing the base conditions for an issue of Bearer Securities or such other edition as specified in the Issue Terms.

**"Beneficial Owners"** means any person holding a beneficial interest in the USD Rule 144A Global Certificates from time to time.

**"benefit plan investor"** means (A) any employee benefit plan (as defined in section 3(3) of ERISA), (B) any plan described in section 4975(e)(1) of the U.S. Internal Revenue Code, or (C) any entity whose underlying assets include plan assets by reason of a plan's investment in the entity (within the meaning of the U.S. Department of Labor Regulations section 2510.3-101).

**"Business Day"** means a day which is both:

- (a) a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in London and any Additional Business Centre specified in the Issue Terms; and
- (b) either (i) in relation to any sum payable in a Currency of Issue other than euro, a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in the principal financial centre of the country of the relevant Currency of Issue (if other than London and any Additional Business Centre and which, if the Currency of Issue is Australian dollars or New Zealand dollars, shall be Sydney and Auckland, respectively) or (ii) in relation to any sum payable in euro, a day on which the Target2 System is open.

**"Business Day Convention"** means one of the following, as specified in the Issue Terms:

- (a) **"FRN Convention"** means that, in any case where Specified Periods are specified in the Issue Terms, the date subject to such convention (i) if there is no numerically corresponding day in the calendar month in which an date subject to such convention should occur, shall be the last day that is a Business Day in the relevant month and the provisions of (B) below shall apply *mutatis mutandis* or (ii) if any date subject to such convention would otherwise fall on a day which is not a Business Day, shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event (A) such date subject to such convention shall be brought forward to the immediately preceding Business Day and (B) each subsequent date subject to such convention shall be the last Business Day in the month which falls the Specified Period after the preceding applicable date subject to such convention occurred; or
- (b) **"Following Business Day Convention"** means that, if any date subject to such convention would otherwise fall on a day which is not a Business Day, such date subject to such convention shall be postponed to the next day which is a Business Day; or
- (c) **"Modified Following Business Day Convention"** means that, if any date subject to such convention would otherwise fall on a day which is not a Business Day, such date subject to such convention shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event such date subject to such convention shall be brought forward to the immediately preceding Business Day; or
- (d) **"Preceding Business Day Convention"** means that, if any date subject to such convention would otherwise fall on a day which is not a Business Day, such date subject to such convention shall be brought forward to the immediately preceding Business Day.

**"C Rules"** means U.S. Treas. Reg. section 1.163-5(c)(2)(i)(C).

**"Calculation Agent"** means, in relation to a Series of Securities, the entity (if any) appointed as such under the Agency Agreement and as specified in the Issue Terms, and includes any Replacement Calculation Agent.

**"Calculation Agent Default"** means, in relation to the Calculation Agent, the Calculation Agent also acts as the Counterparty in relation to the relevant Series of Securities and, having taken into account any applicable grace period, an Event of Default (as defined in the Swap Agreement) has occurred under the Swap Agreement and the Counterparty is the Defaulting Party (as defined in the Swap Agreement).

**"Calculation Amount"** means, in relation to a Series of Securities, the Specified Denomination if there is only one Specified Denomination, but where there is more than one Specified Denomination, the highest common factor or otherwise as specified in the Issue Terms. For clarification purposes, there must be a common factor in the case of two or more Specified Denominations.

**"Cash Collateral"** means, in relation to a Series of Securities, (a) the Price (as defined in the Sale Agreement) payable by the Issuer to the Vendor in respect of the sale of the Initial Charged Assets multiplied by (b) the principal amount of the Initial Charged Assets not delivered by the Vendor on the Completion Date (or the date thereafter agreed by the Issuer and the Vendor) divided by the total principal amount of the Initial Charged Assets specified in the Issue Terms.

**"Cash Deposit Account"** means, in relation to a Series of Securities and as may be further described in the Issue Terms, the segregated account established in the name of the Issuer with HSBC Bank plc or any of its affiliates.

**"Charged Agreement(s)"** means, in relation to a Series of Securities, the Swap Agreement(s) (if any) together with any Swap Guarantee in respect of such Swap Agreement(s) (if any).

**"Charged Assets"** means, in relation to a Series of Securities, the benefits, interest, right and title in and to the bonds, notes, securities, commodities, loans, schuldscheine, equity interests (including shares and participating income notes), contractual or other rights (including, without limitation, with respect to sub-participations or swap, option, exchange and hedging arrangements (but, for the avoidance of doubt, excluding Charged Agreements)), or other assets as specified in the Issue Terms and, where applicable, the instruments and other documents representing, evidencing, acknowledging and/or transferring or otherwise relating to the same. The term "Charged Assets" shall include the Initial Charged Assets and any substitute or replacement Charged Assets.

**"Clearing Systems"** means, in relation to a Series of Securities, any of Euroclear, Clearstream, Luxembourg and DTC, as the case may be, and includes any additional or alternative clearing systems specified in the Issue Terms.

**"Clearstream, Luxembourg"** means Clearstream Banking, société anonyme.

**"Collateral Top Up Costs"** has the meaning given to it in Condition 4(b)(ii) (*Charged Assets – Substitution at the request of Securityholders*).

**"Common Depositary"** means a common depositary on behalf of Euroclear and Clearstream, Luxembourg.

**"Common Safekeeper"** means a common safekeeper for Euroclear and Clearstream, Luxembourg.

**"Common Service Provider"** means a common service provider appointed by Euroclear and Clearstream, Luxembourg to service the Securities.

**"Conditions"** means, in relation to a Series of Securities, the provisions of the Conditions Modules incorporated by reference into the relevant Issue Terms as the same may be modified and/or supplemented by such Issue Terms.

**"Conditions Modules"** means the modules containing terms and conditions which will apply to a Series of Securities to the extent incorporated into the Issue Terms (including, without limitation, the Bearer Securities Base Conditions Module, the Registered Securities Conditions Module, the Credit-Linked Securities Conditions Module and/or such other modules as may be proposed by the Arranger from time to time).

**"Consenting Holders"** has the meaning given to it in Condition 4(b)(ii) (*Charged Assets – Substitution at the request of Securityholders*).

**"Counterparty"** means, in relation to a Series of Securities, the entity or entities (if any) designated as the counterparty or counterparties in the Issue Terms.

**"Counterparty Account"** means, in relation to a Series of Securities, the account of the Counterparty from time to time designated for such purpose, which account being initially as set out in the Issue Terms.

**"Counterparty Priority Basis"** means first, in meeting the claims of the Counterparty (or if more than one Counterparty, meeting the claims of all such Counterparties on the basis as specified in the Issue Terms) under the Charged Agreement(s) and, thereafter, in meeting the claims of the Securityholders on a *pari passu* and *pro rata* basis.

**"Counterparty/Securityholder Priority Basis"** means (a) Counterparty Priority Basis or (b) if the Counterparty is the Defaulting Party in respect of and as defined in the Swap Agreement at any time, Securityholder Priority Basis.

**"Couponholders"** means the several persons who are for the time being holders of the Coupons.

**"Coupons"** means the bearer interest coupons appertaining to the Bearer Securities in definitive form (other than in the case of Zero-Coupon Securities) or, as the context may require, a specific number thereof and includes any replacements for Coupons issued pursuant to Condition 14 (*Replacement of Securities*) and, where the context so permits, the Talons.

**"Credit-Linked Definitions Module"** means the Credit-Linked Definitions Module (March 2010 Edition) containing definitions relating to Credit-Linked Securities or such other edition as specified in the Issue Terms.

**"Credit-Linked Loan Terms Module"** means the Credit-Linked Loan Terms Module (July 2009 Edition) containing the additional terms for a Credit-Linked Loan or such other edition as specified in the Loan Facility Terms.

**"Credit-Linked Securities Conditions Module"** means the Credit-Linked Securities Conditions Module (March 2010 Edition) containing the additional conditions for an issue of Credit-Linked Securities or such other edition as specified in the Issue Terms.

**"Currency of Issue"** means, in relation to a Series of Securities, the currency in which the Issue Terms of such Securities specify that the principal, premium (if any) and/or interest, if any, and all other amounts are payable by the Issuer.

**"Custodian"** means, in relation to a Series of Securities, the entity (if any) appointed as such under the Agency Agreement and as specified in the Issue Terms and, if applicable, any subcustodian of, or any other entity appointed by, the Custodian.

**"Custodian Account"** means, in relation to a Series of Securities, the account designated as the Custodian Account in the Issue Terms.

**"D Rules"** means U.S. Treas. Reg. section 1.163-5(c)(2)(i)(D).

**"Dealer"** means, in relation to a Series of Securities, the entity or entities designated as dealer in the Issue Terms.

**"Debt Investments"** means the Securities and/or Alternative Investments that may be issued by, or entered into by, the Issuer pursuant to the Programme.

**"Definitions Modules"** means the General Definitions Module and, as the case may be, the Credit-Linked Definitions Module and/or such other modules as may be proposed by the Arranger from time to time.

**"Definitive Registered Security"** means a definitive certificate representing a Registered Security substantially in the form of Part 3-E of the First Schedule to the Trust Terms Module to be issued only in the limited circumstances set out in the Conditions and bearing a legend substantially in the form of the legend appearing on the Rule 144A Global Certificate or Regulation S Global Certificate in exchange for which such Definitive Registered Security is issued.

**"Determination Date"** means, in relation to a Series of Securities, the dates as set out in the Issue Terms, if applicable.

**"Determination Period"** means each period from (and including) a Determination Date to (but excluding) the next Determination Date (including, where either the Interest Commencement Date or the final Interest Payment Date is not a Determination Date, the period commencing on the first Determination Date prior to, and ending on the first Determination Date falling after, such date).

**"Distribution Compliance Period"** means the period commencing on the later of the first date the Securities are offered to the public or the settlement date for the Securities, and ending on the day that is 40 calendar days thereafter.

**"DTC"** means The Depository Trust Company at its office at 55 Water Street, New York, N.Y. 10041, United States of America.

**"DTC Important Notice"** means a notice substantially in the form set out in Part 10 of the First Schedule to the Trust Terms Module to be sent to DTC in connection with the issuance of the USD Rule 144A Global Certificates.

**"ERISA"** means the United States Employee Retirement Income Security Act of 1974, as amended.

**"Early Redemption Amount"** means, in relation to a Series of Securities, that portion of the Realisation Amount available for distribution to the Securityholders in accordance with the relevant Security Ranking Basis, as apportioned *pro rata* amongst all the Securities or as may otherwise be specified in the Issue Terms.

**"Eligible Assets"** means cash deposits or any debt securities:

- (a) of any Group of 7 country (or any country that becomes a member of the Group of 7 if such Group of 7 expands its membership);
- (b) which have the same credit rating as the Initial Charged Assets at the Issue Date or better; and
- (c) which are non-amortising,

unless otherwise specified in the Issue Terms.

**"Eligible Investments"** means securities or other assets of the type or types specified as such in the relevant Issue Terms.

**"Eligible Investors"** means:

- (a) if the Issue Terms specify that the Issuer will be relying on Section 3(c)(1) of the 1940 Act, (A) persons who constitute one beneficial owner for the purpose of Section 3(c)(1) of the 1940 Act and the rules thereunder and (B) either (X) institutions that qualify as IAs or (Y) QIBs, but excluding therefrom: (i) a partnership, common trust fund, special trust, pension fund, retirement plan or other entity in which the partners, beneficiaries or participants, as the case may be, may designate the particular investments to be made or the allocation thereof, (ii) an entity that was formed, reformed or recapitalised for the specific purpose of investing in the Securities, and (iii) any entity that will have invested more than 40 per cent. of its assets in securities of the Issuer subsequent to any purchase of the Securities; or
- (b) if the Issue Terms specify that the Issuer will be relying on Section 3(c)(7) of the 1940 Act, persons who are QIBs and QPs but excluding therefrom: (i) QIBs that are broker dealers that own and invest on a discretionary basis less than U.S.\$25 million in securities as determined under Rule 144A of the Securities Act, (ii) a partnership, common trust fund, special trust, pension fund, retirement plan or other entity in which the partners, beneficiaries or



participants, as the case may be, may designate the particular investments to be made or the allocation thereof, (iii) an entity that was formed, reformed or recapitalised for the specific purpose of investing in the Securities, (iv) any investment company excepted from the 1940 Act solely pursuant to Section 3(c)(1) or Section 3(c)(7) thereof and formed prior to April 30, 1996, that has not received the consent of its beneficial owners with respect to the treatment of such entity as a qualified purchaser in the manner required by Section 2(a)(51)(C) of the 1940 Act and rules thereunder and (v) any entity that will have invested more than 40 per cent. of its assets in the securities of the Issuer subsequent to any purchase of the Securities.

**"Equity-Linked Securities"** means Securities which incorporate, amongst other things, the 2002 ISDA Equity Derivatives Definitions.

References to **"euro"** and **"€"** are to the currency introduced at the start of the third stage of European economic and monetary union pursuant to the Treaty establishing the European Community, as amended.

**"Euroclear"** means Euroclear Bank S.A./N.V.

**"Euroclear/Clearstream Important Notice"** means a notice substantially in the form set out in Part 11 of the First Schedule to the Trust Terms Module to be sent to each of Euroclear and Clearstream, Luxembourg, respectively, in connection with the issuance of the Rule 144A Global Certificates.

**"EURIBOR"** means Euro-zone inter-bank offered rate.

**"Event of Default"** means, in relation to the Securities of any Series, any of the conditions, events or acts provided in Condition 11 (*Events of Default*) to be events upon the occurrence of which the Securities of such Series would, subject only to notice by the relevant Trustee as therein provided, become immediately due and repayable.

**"Exchange Act"** means the United States Securities Exchange Act of 1934, as amended.

**"Exchange Date"** means, where applicable, the date which is 40 days after the date on which the Temporary Bearer Global Security is issued.

**"Exchange Event"** means that (i) an Event of Default has occurred and is continuing or (ii) Euroclear and Clearstream, Luxembourg have been closed for business or the Issuer has been notified of such closure of Euroclear and Clearstream, Luxembourg, and no successor clearing system is available.

**"Extraordinary Resolution"** has the meaning set out in paragraph 20 of the Third Schedule to the Trust Terms Module.

**"Final Redemption Amount"** means, in relation to a Series of Securities, the Final Redemption Amount set out in the Issue Terms.

**"Fitch"** means Fitch Ratings Ltd. or any successor to the rating business thereof.

**"Fixed Day Count Fraction"** means, in respect of the calculation of an amount of interest for any Fixed Interest Period:

- (a) if "Actual/Actual (ICMA)" is specified in the Issue Terms:
  - (i) in the case of Securities where the number of days in the relevant period from (and including) the most recent Interest Payment Date (or, if none, the Interest

Commencement Date) to (but excluding) the relevant payment date (the "**Accrual Period**") is equal to or shorter than the Determination Period during which the Accrual Period ends, the number of days in such Accrual Period divided by the product of (A) the number of days in such Determination Period and (B) the number of Determination Dates (as specified in the Issue Terms) that would occur in one calendar year; or

- (ii) in the case of Securities where the Accrual Period is longer than the Determination Period during which the Accrual Period ends, the sum of:
  - (A) the number of days in such Accrual Period falling in the Determination Period in which the Accrual Period begins divided by the product of (1) the number of days in such Determination Period and (2) the number of Determination Dates that would occur in one calendar year; and
  - (B) the number of days in such Accrual Period falling in the next Determination Period divided by the product of (1) the number of days in such Determination Period and (2) the number of Determination Dates that would occur in one calendar year; and
- (b) if "30/360" is specified in the Issue Terms, the number of days in the period from (and including) the most recent Interest Payment Date (or, if none, the Interest Commencement Date) to (but excluding) the relevant payment date (such number of days being calculated on the basis of a year of 360 days with 12 30-day months) divided by 360.

**"Fixed Interest Period"** means, in relation to Fixed Rate Securities, the period from (and including) an Interest Payment Date (or the Interest Commencement Date) to (but excluding) the next (or first) Interest Payment Date.

**"Fixed Rate Securities"** means an issue of Securities in respect of which interest accrues at a fixed rate as stated in the Issue Terms applicable to such Securities.

**"Floating Day Count Fraction"** means, in respect of the calculation of an amount of interest for any Interest Period:

- (a) if "Actual/365" or "Actual/Actual" is specified in the Issue Terms, the actual number of days in the Interest Period divided by 365 (or, if any portion of that Interest Period falls in a leap year, the sum of (i) the actual number of days in that portion of the Interest Period falling in a leap year divided by 366 and (ii) the actual number of days in that portion of the Interest Period falling in a non-leap year divided by 365);
- (b) if "Actual/365 (Fixed)" is specified in the Issue Terms, the actual number of days in the Interest Period divided by 365;
- (c) if "Actual/365 (Sterling)" is specified in the Issue Terms, the actual number of days in the Interest Period divided by 365 or, in the case of an Interest Payment Date falling in a leap year, 366;
- (d) if "Actual/360" is specified in the Issue Terms, the actual number of days in the Interest Period divided by 360;
- (e) if "30/360", "360/360" or "Bond Basis" is specified in the Issue Terms, the number of days in the Interest Period divided by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$$

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Interest Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Interest Period, unless such number is 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless such number would be 31 and D<sub>1</sub> is greater than 29, in which case D<sub>2</sub> will be 30;

- (f) if "30E/360" or "Eurobond Basis" is specified in the Issue Terms, the number of days in the Interest Period divided by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$$

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Interest Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Interest Period, unless such number would be 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless such number would be 31, in which case D<sub>2</sub> will be 30;

- (g) if "30E/360 (ISDA)" is specified in the applicable Issue Terms, the number of days in the Interest Period divided by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$$

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Interest Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Interest Period, unless (i) that day is the last day of February or (ii) such number would be 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless (i) that day is the last day of February but not the Maturity Date or (ii) such number would be 31, in which case D<sub>2</sub> will be 30.

**"Floating Rate Option"** means, in respect of a Series of Floating Rate Securities, the option (which may, but need not, be provided in the ISDA Definitions) which is specified in the Issue Terms of such Securities.

**"Floating Rate Securities"** means an issue of Securities in respect of which interest at a floating rate is determined in accordance with the Issue Terms applicable to such Securities.

**"FSA"** means the Financial Services Authority or any successor regulator which may be appointed from time to time.

**"FSA Rules"** means the rules and regulations as amended or varied from time to time, of the FSA, including its Conduct of Business Rules, established under or pursuant to the FSMA by which the Custodian is regulated.

**"FSMA"** means the Financial Services and Markets Act 2000.

**"Further Fungible Securities"** has the meaning given to it in Condition 19 (*Further Issues*).

**"General Definitions Module"** means the General Definitions Module (March 2010 Edition) containing general definitions for an issue of Securities or such other edition as specified in the Issue Terms.

**"Global Security"** means a Temporary Bearer Global Security and/or a Permanent Bearer Global Security and/or a Regulation S Global Certificate and/or a Rule 144A Global Certificate, as the context may require.

**"IAI"** means an institutional investor that qualifies as an accredited investor (within the meaning of paragraphs (1), (2), (3) or (7) of Rule 501(a) of Regulation D under the Securities Act).

**"ICSDs"** means the international central securities depositories, Euroclear and Clearstream, Luxembourg.

**"Indexed Interest Securities"** means an issue of Securities in respect of which the amount payable in respect of interest is calculated by reference to an index and/or a formula in accordance with the relevant Issue Terms.

**"Individual Certificates"** means Registered Securities issued in physical definitive form and registered in the name of the holder thereof.

**"Initial Charged Assets"** has the meaning given to it in Condition 4 (*Charged Assets*) and in respect of each Series of Securities, as specified in the Issue Terms.

**"Initial Tranche"** means, if the Securities of a Series are, in accordance with the terms of the Trust Instrument relating to such Series, to be issued in tranches, the initial tranche specified in the Trust Instrument in respect of that Series.

**"Instructing Creditor"** means, in relation to a Series of Securities, either: (a) the Counterparty only; (b) the Securityholders only; or (c) the Counterparty and the Securityholders, as specified in the Issue Terms. For the avoidance of doubt, where "the Counterparty or the Securityholders" are specified as the Instructing Creditor there is no requirement for the Counterparty and the Securityholders to act together as Instructing Creditors.

**"Interest Amount"** has the meaning set out in Condition 7(b)(iv) (*Types of Securities - Floating Rate Securities and Indexed Interest Securities*).

**"Interest Determination Date"** means, in relation to a Series of Securities, the date(s) set out in the Issue Terms where Screen Rate Determination is specified as applicable.

**"Interest Payment Date"** means, in relation to a Series of Securities, the date(s) set out in the Issue Terms.

**"Interest Period"** has the meaning set out in Condition 7(b)(i) (*Types of Securities - Floating Rate Securities and Indexed Interest Securities*).

**"investment company"** means an investment company for the purposes of the 1940 Act.

**"Investment Letter"** means a letter substantially in the form attached as Part 9 of the First Schedule to the Trust Terms Module, to be delivered by each initial purchaser that is a U.S. person or that purchased the Securities during the Distribution Compliance Period when the Issuer is relying on the exception from the 1940 Act set out in Section 3(c)(1) or Section 3(c)(7) thereof, or in such other form as is set out in the Trust Instrument.

**"Irish Stock Exchange"** means the Irish Stock Exchange Limited.

**"ISDA"** means the International Swaps and Derivatives Association, Inc.

**"ISDA Definitions"** means the 2000 ISDA Definitions or the 2006 ISDA Definitions or such other definitions as may be specified in the Issue Terms.

**"Issue Date"** means, in relation to a Tranche of Securities, the date specified in the Issue Terms relating to such Securities as such, being the date on which such Securities are constituted.

**"Issue Terms"** means, in relation to a Series of Securities, the issue terms set out in the Trust Instrument relating to such Securities, including the terms of the Conditions Modules and Definitions Modules incorporated by reference, as the same may be modified and/or supplemented.

References to **"Japanese Yen"**, **"Yen"** and **"¥"** are to the lawful currency of Japan.

**"Liability"** means any loss, damage, cost, charge, claim, demand, expense, judgment, action, proceeding or other liability whatsoever (including, without limitation, in respect of taxes, duties,

levies, imposts and other charges) and including any value added tax or similar tax charged or chargeable in respect thereof and legal fees and expenses on a full indemnity basis.

**"LIBOR"** means London inter-bank offered rate.

**"Liquidation Assets"** has the meaning given to it in Condition 4(b)(ii) (*Charged Assets – Substitution at the request of Securityholders*).

**"Liquidation Proceeds"** has the meaning given to it in Condition 4(b)(ii) (*Charged Assets – Substitution at the request of Securityholders*).

**"Loan Facility Agreement"** means the loans, howsoever described, (including, without limitation, Credit-Linked Loans) constituted by the Trust Instrument and incorporating therein the Loan Terms Modules.

**"Loan Facility Terms"** means, in relation to a Loan Facility Agreement, the loan facility terms set out in the Trust Instrument relating to such Loan Facility Agreement including the terms of the Loan Terms Modules and Definitions Modules incorporated by reference, as the same may be modified and/or supplemented.

**"Loan Facility Terms Module"** means the Loan Facility Terms Module (July 2009 Edition) (as updated) containing the base terms for a Loan Facility Agreement or such other edition as specified in the Loan Facility Terms.

**"Loan Terms Modules"** means the modules containing the terms which will apply to a Loan Facility Agreement to the extent incorporated into the Loan Facility Terms (including, without limitation, the Loan Facility Terms Module, the Credit-Linked Loan Terms Module and/or such other modules as may be proposed by the Arranger from time to time).

**"Luxembourg Stock Exchange"** means The Luxembourg Stock Exchange.

**"Margin"** means, in relation to a Series of Floating Rate Securities, the margin (if any) set out in the Issue Terms.

**"Market Value Basis"** means:

- (i) in the case of substitution of Charged Assets, that the value of the assets required to be provided by the Issuer shall be equal to the Market Value of the then subsisting Charged Assets on the date specified by the Counterparty in the Substitution Notice given by the Counterparty, and, for these purposes, **"Market Value"** shall mean the firm bid price obtained by the Calculation Agent from 3 dealers (one of whom may be the Counterparty) in such assets as it may in its discretion select (or, if more than one, the arithmetical average of such prices, disregarding the highest and lowest quotes) or, if less than 2 such bid prices are quoted by or available to such Calculation Agent, it shall be calculated by the Calculation Agent in such other manner as it shall determine in good faith and in a commercially reasonable manner; and
- (ii) in the case of the issue of Further Fungible Securities, that the additional assets required to be provided by the Issuer in respect of the Further Fungible Securities shall be calculated in accordance with a formula that takes into account the Market Value of the Charged Assets and the replacement costs of the Charged Agreement(s), if any, all as more fully described in the Issue Terms.

**"Maturity Date"** means, in relation to a Series of Securities, the final date on which the Securities are expressed to be redeemable as specified in the Issue Terms (which date may in certain circumstances be extended in accordance with the Issue Terms).

**"Maximum Interest Rate"** means, in relation to a Series of Securities, if applicable, such rate as is specified as the Maximum Interest Rate in the Issue Terms.

**"Minimum Interest Rate"** means, in relation to a Series of Securities, if applicable, such rate as is specified as the Minimum Interest Rate in the Issue Terms.

**"Moody's"** means Moody's Investors Services Limited or any successor to the rating business thereof.

**"Mortgaged Property"** means, in relation to any Series of Securities, the assets over which the Security Interests are created by the Issuer from time to time in relation to such Securities, including, as applicable, the Charged Assets and the Rights under the Transaction Documents.

**"New Series of Securities"** has the meaning given to it in Condition 4(b)(ii) (*Charged Assets – Substitution at the request of Securityholders*).

**"Nominal Basis"** means:

- (i) in the case of substitution of Charged Assets, that the assets required to be provided by the Issuer shall be of a nominal amount equal to the nominal amount of the Charged Assets being substituted; and
- (ii) in the case of the issue of Further Fungible Securities, that the additional assets required to be provided by the Issuer shall be in a nominal amount which bears the same proportion to the nominal amount of the Further Fungible Securities as the proportion which the nominal amount of such assets forming part of the Mortgaged Property for the existing Securities of such Series bears to the nominal amount thereof as at such date.

**"Non-U.S. Series"** means a series of Securities all of which will be offered and sold outside the United States to non-U.S. Persons.

**"N-USD Securities"** means Securities denominated in a currency other than U.S. Dollars.

**"N-USD Regulation S Global Certificate"** means a registered global security in the form or substantially in the form set out in Part 3-A of the First Schedule to the Trust Terms Module (in the case of a Non-U.S. Series) or Part 3-D of the First Schedule to the Trust Terms Module (in the case of a U.S. Series) with such modifications (if any) as may be agreed between the Issuer, the Trustee and the Counterparty, comprising some or all of the Registered Securities of the same Series sold outside the United States to non-U.S. Persons in reliance on Regulation S under the Securities Act, issued by the Issuer pursuant to the Trust Instrument.

**"N-USD Rule 144A Global Certificate"** means a fully registered global security substantially in the form of Part 3-C of the First Schedule to the Trust Terms Module with such modifications (if any) as may be agreed between the Issuer, the Trustee and the Counterparty, comprising some or all of the Registered Securities of the same Series pursuant to which any Securities offered and sold to or for the account or benefit of U.S. Persons in accordance with the legend appearing thereon will be represented.

**"Optional Call Redemption Amount"** in relation to a Series of Securities shall have the meaning set out in the Issue Terms.

**"Optional Call Redemption Date"** in relation to a Series of Securities shall have the meaning set out in the Issue Terms.

**"Optional Put Redemption Amount"** in relation to a Series of Securities shall have the meaning set out in the Issue Terms.

**"Optional Put Redemption Date"** in relation to a Series of Securities shall have the meaning set out in the Issue Terms.

**"outstanding"** means, in relation to a Series of Securities, all the Securities of that Series issued (or, in the case of Partly Paid Securities, the paid up amount thereof) other than:

- (a) those Securities to the extent that they shall have been redeemed in part pursuant to the relevant Issue Terms;
- (b) those Securities which have been redeemed in full pursuant to the relevant Issue Terms;
- (c) those Securities in respect of which the date for redemption in accordance with the relevant Issue Terms has occurred and the redemption moneys (including all premium (if any) and interest (if any) payable thereon) have been duly paid to the Trustee, the Registrar and/or the Principal Paying Agent in the manner provided in the Agency Agreement (and where appropriate notice to that effect has been given to the Securityholders in accordance with Condition 15 (*Notices*)) and remain available for payment against presentation of the Securities;
- (d) those Securities which have been purchased and cancelled in accordance with Condition 9 (*Purchase*);
- (e) those Securities in respect of which claims have become void under Condition 13 (*Prescription*);
- (f) those mutilated or defaced Securities which have been surrendered and cancelled and in respect of which replacements have been issued pursuant to Condition 14 (*Replacement of Securities*);
- (g) (for the purpose only of ascertaining the nominal amount of the Securities of that Series outstanding and without prejudice to the status for any other purpose of the Securities) those Securities which are alleged to have been lost, stolen or destroyed and in respect of which replacements have been issued pursuant to Condition 14 (*Replacement of Securities*); and
- (h) any Temporary Global Security to the extent that it shall have been exchanged for definitive Bearer Securities or a Permanent Bearer Global Security and any Permanent Bearer Global Security to the extent that it shall have been exchanged for definitive Bearer Securities in each case pursuant to its provisions; and

PROVIDED THAT for each of the following purposes, namely:

- (i) the right to attend and vote at any meeting of the Securityholders or any of them;
- (ii) the determination of how many and which Securities are for the time being outstanding for the purposes of Conditions 11 (*Events of Default*) and 12 (*Enforcement*) and paragraphs 2, 5, 6 and 9 of the Third Schedule to the Trust Terms Module;



- (iii) any discretion, power or authority (whether contained in the Trust Instrument or vested by operation of law) which the Trustee is required, expressly or impliedly, to exercise in or by reference to the interests of the Securityholders or any of them; and
- (iv) the determination by the Trustee whether any event, circumstance, matter or thing is, in its opinion, materially prejudicial to the interests of the Securityholders or any of them,

those Securities (if any) which are for the time being held by, for the benefit of, or on behalf of, the Issuer, the Counterparty (if any), the Swap Guarantor (if any) or any Subsidiary of the Issuer, the Counterparty or the Swap Guarantor (if any) shall (unless and until ceasing to be so held) be deemed not to remain outstanding.

**"Outstanding Principal Amount"** means in relation to a Security, the principal amount of such Security outstanding from time to time.

**"Pari Passu Basis"** means, in meeting the claims of the Securityholders and the Counterparty (or if more than one Counterparty, meeting the claims of all such Counterparties on the basis as specified in the Issue Terms) under the Charged Agreement(s), on a *pari passu* and *pro rata* basis.

**"Partly Paid Securities"** means Securities which are issued on a partly paid basis.

**"Paying Agents"** means, in relation to a Series of Securities, the entities (if any) appointed as such under the Agency Agreement and as specified in the Issue Terms and includes, for the avoidance of doubt, the Principal Paying Agent.

**"Payment Day"** means any day which (subject to Condition 13 (*Prescription*)) is:

- (i) a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in:
  - (A) the relevant place of presentation;
  - (B) London; and
  - (C) any Additional Financial Centre specified in the Issue Terms; and
- (ii) either (1) in relation to any sum payable in a Currency of Issue other than euro, a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in the principal financial centre of the country of the relevant Currency of Issue (if other than the place of presentation, London and any Additional Financial Centre and which if the Currency of Issue is Australian dollars or New Zealand dollars shall be Sydney and Auckland, respectively) or (2) in relation to any sum payable in euro, a day on which the Target2 System is open.

**"Permanent Bearer Global Security"** means a permanent bearer global security in the form or substantially in the form set out in Part 2 of the First Schedule to the Trust Terms Module with such modifications (if any) as may be agreed between the Issuer, the Trustee and the Counterparty, comprising some or all of the Bearer Securities of the same Issue, issued by the Issuer pursuant to the Trust Instrument either on issue of the Securities or in exchange for the whole or part of the Temporary Bearer Global Security issued in respect of such Bearer Securities (all as indicated in the Issue Terms).

**"Placing Agreement"** means, in relation to a Series of Securities, the placing agreement entered into by the Issuer and the Dealer(s) in respect of such Series by execution of the relevant Trust Instrument and into which the terms of the Placing Terms Module are incorporated by reference as the same may be modified and/or supplemented by the Trust Instrument.

**"Placing Terms Module"** means the Placing Terms Module (July 2009 Edition) containing the provisions relating to the purchase and/or placing of Securities or such other edition as specified in the Issue Terms.

**"Potential Event of Default"** means any condition, event or act which, with the lapse of time and/or the issue, making or giving of any notice, certification, declaration, demand, determination and/or request and/or the taking of any similar action and/or the fulfilment of any similar condition, would constitute an Event of Default.

**"Principal Paying Agent"** means, in relation to a Series of Securities, the entity appointed as such under the Agency Agreement and as specified in the Issue Terms.

**"Principal Protected CDO Securities"** means, unless otherwise specified in the Issue Terms, Securities which do not bear a pre-determined rate of interest and where:

- (i) in the event that distributions are made by, or payments of interest and/or principal are made by, the obligor of the relevant Charged Assets specified in the Issue Terms, such sums will be paid to the Securityholders within two Business Days (or such other number of days as may be specified in the Issue Terms) of receipt thereof; and
- (ii) the Issue Terms will set out the expected dates of any distributions or payments.

**"Programme"** means the U.S.\$50,000,000,000 Limited Recourse Secured Debt Issuance Programme of the Issuer.

**"Put Notices"** has the meaning given to it in Condition 8(e) (*Redemption - Redemption at the option of the Securityholders*).

**"QIB"** means a "qualified institutional buyer" as defined in Rule 144A under the Securities Act.

**"QP" or "Qualified Purchaser"** means a "qualified purchaser" within the meaning set out in Section 2(a)(51) of the 1940 Act and the rules thereunder.

**"Rate of Interest"** means, in relation to a Series of Securities, the Rate of Interest set out in the Issue Terms.

**"Rating Agency"** means, in relation to a Series of Securities that is rated, each rating agency specified in the Issue Terms.

**"Rating Agency Confirmation"** means, in relation to a Series of Securities that is rated the notification of the relevant event specified in the Issue Terms to the Rating Agency and confirmation from the Rating Agency that there has been no adverse change to the credit rating granted by such Rating Agency in respect of such Securities.

**"Realisation Amount"** means the net proceeds of realisation of, or enforcement with respect to, the Security Interests over, the Charged Assets or the Mortgaged Property, as applicable (following payment of all amounts due to the Trustee or, as the case may be, the Selling Agent, including any costs, expenses and taxes incurred in connection with such realisation or enforcement).

**"Record Date"** means, in relation to a payment in respect of Individual Certificates or Regulation S Global Certificates, the Business Day falling, or falling nearest to but before, 15 days prior to the date on which the relevant payment is due.

**"Reference Banks"** means, in the case of a determination of LIBOR, the principal London office of 4 major banks in the London inter-bank market and, in the case of a determination of EURIBOR, the principal Euro-zone office of 4 major banks in the Euro-zone inter-bank market, in each case selected by the Principal Paying Agent or as specified in the Issue Terms.

**"Reference Rate"** means, in relation to a Series of Securities, the Reference Rate set out in the Issue Terms where Screen Rate Determination is specified as applicable.

**"Register"** means a register on which shall be entered the names and addresses of the subscribers of the Registered Securities or, as the case may be, of the latest transferees of the same notified to the Registrar in accordance with Condition 1.4(c) of the Registered Securities Conditions Module (*Transfer of Registered Securities - General*), together with the particulars of the Registered Securities held by them respectively and of all transfers of Registered Securities.

**"Registered Global Securities"** means, together, the Regulation S Global Certificates and the Rule 144A Global Certificates.

**"Registered Securities"** means those of the Securities which are for the time being in registered form.

**"Registered Securities Conditions Module"** means the Registered Securities Conditions Module (July 2009 Edition) containing the provisions relating to an issue of Registered Securities and provisions additional to or instead of provisions in the Bearer Securities Base Conditions Module or such other edition as specified in the Issue Terms.

**"Registrar"** means, in relation to a Series of Securities (being, or which are exchangeable for, Registered Securities), the entity appointed as such under the Agency Agreement and as specified in the Issue Terms.

**"Regulation S Global Certificates"** means collectively, the USD Regulation S Global Certificate and the N-USD Regulation S Global Certificate.

**"Regulation S Transfer Certificate"** means a transfer certificate substantially in the form attached to the Rule 144A Global Certificate, being the certificate to be delivered to the Registrar in order to request a transfer of an interest in a Rule 144A Global Certificate to a non-U.S. person taking an interest in a Regulation S Global Certificate representing Securities of the same Series.

**"Relevant Date"** has the meaning set out in Condition 13 (*Prescription*).

**"Relevant Screen Rate"** means, in relation to a Series of Securities, the relevant screen rate set out in the Issue Terms where Screen Rate Determination is specified as applicable.

**"repay", "redeem" and "pay"** shall each include both the others and cognate expressions shall be construed accordingly and shall (where the context so permits) be deemed to include references to delivery of the Charged Assets in accordance with the Issue Terms.

**"Replacement Agent Bank"** means the Replacement Agent Bank appointed by the Issuer or the Trustee, as the case may be, in accordance with Condition 17 (*Appointment of Replacement Selling Agent, Replacement Calculation Agent and Replacement Agent Bank*).

**"Replacement Assets"** has the meaning given to it in Condition 4(b)(ii) (*Charged Assets – Substitution at the request of Securityholders*).

**"Replacement Calculation Agent"** means the Replacement Calculation Agent appointed by the Issuer or the Trustee, as the case may be, in accordance with Condition 17 (*Appointment of Replacement Selling Agent, Replacement Calculation Agent and Replacement Agent Bank*).

**"Replacement Selling Agent"** means the Replacement Selling Agent appointed by the Issuer or the Trustee, as the case may be, in accordance with Condition 17 (*Appointment of Replacement Selling Agent, Replacement Calculation Agent and Replacement Agent Bank*).

**"Replacement Swap"** has the meaning given to it in Condition 4(b)(ii) (*Charged Assets – Substitution at the request of Securityholders*).

**"Requesting Securityholder"** has the meaning given to it in Condition 4(b)(ii) (*Charged Assets – Substitution at the request of Securityholders*).

**"Required Minimum Securityholders"** means Securityholders holding at least 50 per cent. of the aggregate principal amount of the Securities then outstanding, in each case including any Requesting Securityholder.

**"Restructure Documents"** has the meaning given to it in Condition 4(b)(ii) (*Charged Assets – Substitution at the request of Securityholders*).

**"Rights"** means, in relation to any agreement or asset, all rights, title and interest of the relevant person in, to and under such agreement or asset including, without limitation:

- (i) the Issuer's rights under the Agency Agreement, including all its rights in respect of all funds and/or assets held from time to time by any of the Agents for payment in respect of the Securities or otherwise in relation to the Securities or the Charged Assets; and
- (ii) the Issuer's rights to the Charged Assets, including all its rights in respect thereof or relating thereto and any sums or assets derived therefrom whether or not against third parties, including, without limitation, the Issuer's rights against the Custodian to redelivery of equivalent Charged Assets and any proceeds of the sale of the Charged Assets.

**"Rule 144A Global Certificates"** means, collectively, the USD Rule 144A Global Certificate and the N-USD Rule 144A Global Certificate.

**"Rule 144A Transfer Certificate"** means a transfer certificate substantially in the form attached to the a Regulation S Global Certificate representing Securities of a U.S. Series, being the certificate to be delivered to a Registrar in order to request a transfer of an interest in the Regulation S Global Certificate to a U.S. person taking an interest in a Rule 144A Global Certificate representing Securities of the same Series.

**"Sale Agreement"** means, in relation to a Series of Securities, the sale agreement entered into by the Issuer and the Vendor in respect of such Series by execution of the relevant Trust Instrument pursuant to which the Issuer agrees to purchase the relevant Charged Assets and into which the terms of the Sale Agreement Terms Module are incorporated by reference, as the same may be modified and/or supplemented by the Trust Instrument.

**"Sale Agreement Terms Module"** means the Sale Agreement Terms Module (July 2009 Edition) containing the standard provisions of sale of the Charged Assets to the Issuer or such other edition as specified in the Issue Terms.

**"Sale Request"** has the meaning given to it in Condition 4(b)(ii) (*Charged Assets – Substitution at the request of Securityholders*).

**"S&P"** means Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies, Inc. or any successor to the rating business thereof.

**"Section 3(c)(1) exception"** means the exception to the definition of "investment company" set out in Section 3(c)(1) of the 1940 Act and the rules thereunder.

**"Section 3(c)(7) exception"** means the exception to the definition of "investment company" set out in Section 3(c)(7) of the 1940 Act and the rules thereunder.

**"Securities"** means the bonds, notes or other securities of a Series, howsoever described, constituted by the Trust Instrument and for the time being outstanding or, as the context may require, a specific number thereof, such Securities being denominated in the Currency of Issue and:

- (i) having such maturity as may be specified in the Issue Terms and, in any case, such minimum or maximum maturity as may be allowed or required from time to time by the relevant central bank (or equivalent body) or any laws or regulations applicable to the relevant Currency of Issue;
- (ii) having such minimum denomination as may be allowed or required from time to time by the relevant central bank (or equivalent body) or any laws or regulations applicable to the relevant Currency of Issue; and
- (iii) if sold within the United States or to a U.S. person, having an Authorised Denomination, or the equivalent in other Currencies of Issue;

and reference to **"Securities"** shall be deemed to include Coupons in the case of Bearer Securities in definitive form and Further Fungible Securities unless the context otherwise requires.

**"Securities Act"** means the United States Securities Act of 1933, as amended.

**"Securities and Exchange Law"** means the Securities and Exchange Law of Japan.

**"Security Documents"** means, in relation to a Series of Securities, the Trust Instrument and any Additional Charging Documents.

**"Securityholder Priority Basis"** means, first, in meeting claims of the Securityholders under the Securities on a *pari passu* and *pro rata* basis and, thereafter, in meeting the claims of the Counterparty (or if more than one Counterparty, meeting the claims of all such Counterparties on the basis as specified in the Issue Terms) under the Charged Agreement(s).

**"Securityholders"** means the several persons who are for the time being holders of the Securities (being, in the case of Bearer Securities, the bearers thereof and, in the case of Registered Securities, the several persons whose names are entered in the register of holders of the Registered Securities as the holders thereof) save that, in respect of the Securities of any Series, for so long as such Securities or any part thereof are represented by a Bearer Global Security deposited with a depositary for Euroclear and/or Clearstream, Luxembourg or so long as DTC or its nominee is the registered holder of a Global Security each person who is for the time being shown in the records of Euroclear or Clearstream, Luxembourg or, as the case may be, DTC as the holder of a particular nominal amount of the Securities of such Issue shall be deemed to be the holder of such nominal amount of such Securities (and the holder of the relevant Global Security shall be deemed not to be the holder) for all purposes of the Trust Instrument other than with respect to the payment of principal, premium (if any) or interest (if any) on such Securities, the right to which shall be vested, as against the relevant

Issuer and the relevant Trustee, solely in such depository or, as the case may be, DTC or its nominee and for which purpose such depository or, as the case may be, DTC or its nominee shall be deemed to be the holder of such nominal amount of such Securities in accordance with and subject to its terms and the provisions of the Trust Instrument and the expressions "**Securityholder**", "**holder of Securities**" and related expressions shall be construed accordingly.

"**Security Interests**" means, in relation to a Series of Securities, the security interests created, or intended to be created at any time, in favour of the Trustee under the Security Documents.

"**Security Ranking Basis**" has the meaning given to it in Condition 5 (*Application of Proceeds*).

"**Selling Agent**" means, in relation to a Series of Securities, the entity (if any) appointed as such under the Agency Agreement and as specified in the Issue Terms, and includes any Replacement Selling Agent.

"**Selling Agent Default**" means, in relation to the Selling Agent, the Selling Agent also acts as the Counterparty in relation to the relevant Series of Securities and an Event of Default (as defined in the Swap Agreement) has occurred under the Swap Agreement and the Counterparty is the Defaulting Party (as defined in the Swap Agreement).

"**Series**" means a Tranche of Securities together with any further Tranche or Tranches of Securities which are (i) expressed to be consolidated and form a single series and (ii) identical in all respects (including as to listing) except for the respective Issue Dates, Interest Commencement Dates and/or Issue Prices and initial Common Code and ISIN.

"**Shortfall Date**" has the meaning given to it in Condition 8(a) (*Redemption – Final Redemption*).

"**Specified Denomination**" means, in relation to a Series of Securities, the denomination(s) of the Securities as specified in the Issue Terms.

"**Specified Time**" means 11.00 a.m. (London time, in the case of a determination of LIBOR, or Brussels time, in the case of a determination of EURIBOR).

References to "**Sterling**", "**Pounds Sterling**", "**Pounds**" and "**£**" are to the lawful currency of the United Kingdom.

"**Stock Exchange**" means, in relation to a Series of Securities, each stock exchange or securities market (if any) specified in the Issue Terms.

"**Subsidiary**" means any company which is for the time being a subsidiary (within the meaning of Section 736 of the Companies Act 1985 of Great Britain) or a subsidiary undertaking (within the meaning of Section 258 and Schedule 10A of the Companies Act 1985 of Great Britain).

"**Substitution Notice**" has the meaning given to it in Condition 4(b)(i) (*Charged Assets - Substitution of Charged Assets*).

"**sub-unit**" means, with respect to any currency other than the euro, the lowest amount of such currency that is available as legal tender in the country of such currency and, with respect to the euro, means one cent.

"**successor**" means any successor to any one or more persons appointed in relation to the Securities pursuant to the Trust Instrument and/or such other or further persons appointed as such.

"**Swap Adjustment Cost**" has the meaning given to it in Condition 4(b)(ii) (*Charged Assets – Substitution at the request of Securityholders*).

**"Swap Agreement"** means, in relation to a Series of Securities, each interest rate and/or currency exchange and/or credit default swap agreement(s) or other hedging agreement(s) as evidenced by either (i) a 1992 ISDA Master Agreement (Multicurrency - Cross Border) or (ii) a 2002 ISDA Master Agreement, as specified in the Issue Terms and schedule thereto entered into by the Issuer and the Counterparty by the execution of the relevant Trust Instrument and into which the terms of the Swap Schedule Terms Module are incorporated by reference, as the same may be modified and supplemented by the Trust Instrument, together with the confirmation entered into by the Issuer and the Counterparty, each dated the Issue Date.

**"Swap Guarantee"** means, in relation to a Series of Securities, the guarantee dated the Issue Date executed by the Swap Guarantor in respect of the payment obligations of the Counterparty under the Swap Agreement(s) (if any).

**"Swap Guarantor"** means, in relation to a Series of Securities, the guarantor (if any) of the payment obligations of the Counterparty under any Swap Agreement(s) as designated in the Issue Terms.

**"Swap Schedule Terms Module"** means the Swap Schedule Terms Module (March 2010 Edition) containing the standard provisions of a swap schedule in relation to an issue of Securities as specified in the Issue Terms or such other edition as specified in the Issue Terms.

**"Talons"** means the talons (if any) appertaining to, and exchangeable in accordance with the provisions therein contained for further Coupons appertaining to, the Bearer Securities in definitive form of any Series (other than Zero-Coupon Securities) and includes any replacements for Talons issued pursuant to Condition 14 (*Replacement of Securities*).

**"Target2 System"** means the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET2) System.

**"Temporary Bearer Global Security"** means a temporary bearer global security in the form or substantially in the form set out in Part 1 of the First Schedule to the Trust Terms Module with such modifications (if any) as may be agreed between the Issuer, the Trustee and the Counterparty, comprising some or all of the Securities of the same Series, issued by the Issuer pursuant to the Trust Instrument.

**"Tranche"** means, in relation to a Series of Securities which are, in accordance with the terms of the Trust Instrument, to be issued in tranches, the Initial Tranche and any further tranches issued in accordance with the Trust Instrument relating to that Series.

**"Transaction Documents"** means, in relation to a Series of Securities, the Trust Instrument, the Agency Agreement, the Sale Agreement, the Placing Agreement, the Charged Agreements, the Additional Agreements and any Additional Charging Document, in each case entered into in relation to such Securities and all agreements incidental to the issue of such Securities.

**"Transfer Agents"** means, in relation to a Series of Registered Securities, the entity or entities appointed as such under the Agency Agreement and as specified in the Issue Terms.

**"Transfer Certificate"** means the Regulation S Transfer Certificate and/or the Rule 144A Transfer Certificate as the context may require.

**"Trust Corporation"** means a corporation entitled by rules made under the Public Trustee Act 1906 of Great Britain or entitled pursuant to any other comparable legislation applicable to a trustee in any other jurisdiction to carry out the functions of a custodian trustee.

**"Trustee"** means, in relation to a Series of Securities, the entity designated as the trustee in the Issue Terms.

**"Trust Instrument"** means, in respect of a Tranche of Securities, a trust instrument dated the Issue Date of such Tranche of Securities and made between, among others, the Issuer and the Trustee.

**"Trust Terms Module"** means the Trust Terms Module (July 2009 Edition) containing the trust terms constituting and/or securing the Securities or such other edition as specified in the Issue Terms.

References to **"U.S. dollars"**, **"U.S.\$"** and **"U.S. cents"** are to the lawful currency of the United States of America.

**"USD Securities"** means Securities denominated in U.S. dollars.

**"USD Regulation S Global Certificates"** means a registered global security in the form or substantially in the form set out in Part 3-A of the First Schedule to the Trust Terms Module (in the case of a Non-U.S. Series) or Part 3-D of the First Schedule to the Trust Terms Module (in the case of a U.S. Series) with such modifications (if any) as may be agreed between the Issuer, the Trustee and the Counterparty, comprising some or all of the Registered Securities of the same Series sold outside the United States to non-U.S. Persons in reliance on Regulation S under the Securities Act, issued by the Issuer pursuant to the Trust Instrument.

**"USD Rule 144A Global Certificates"** means a fully registered book-entry security substantially in the form of Part 3-B of the First Schedule to the Trust Terms Module to be deposited on or prior to the issue date for the Securities with or on behalf of DTC and registered in the name of its nominee Cede & Co. pursuant to which any USD Securities offered and sold to or for the account or benefit of U.S. Persons in accordance with the legend appearing thereon will be represented.

**"U.S. Internal Revenue Code"** means the United States Internal Revenue Code of 1986, as amended.

**"U.S. Person"** has the meaning set out in Regulation S under the Securities Act.

**"U.S. Series"** means a series of Registered Securities all or a portion of which will be offered or sold within the United States or to, or for the account or benefit of, U.S. Persons.

**"Vendor"** means, in relation to a Series of Securities, the entity designated as the vendor of the Charged Assets in the Issue Terms.

**"Zero-Coupon Securities"** means an issue of Securities which bear no interest.

## **2. STATUTORY PROVISIONS**

Save where the context otherwise requires, references in any Transaction Document or Conditions Module to any statutory provision shall be deemed also to refer to any statutory modification or re-enactment thereof or to any statutory instrument, order or regulation made thereunder or under any such re-enactment.

## **3. AMENDMENTS**

References in any Transaction Document or Conditions Module to that or any other Transaction Document, Conditions Module, agreement, deed or document shall be deemed also to refer to such module, agreement, deed or document as amended, supplemented, varied, replaced or novated (in whole or in part) from time to time and to modules, agreements, deeds and documents executed pursuant thereto.



#### 4. SCHEDULES

Any Schedule, Appendix or Exhibit annexed to a Transaction Document or Conditions Module forms part of such Transaction Document or Conditions Module and shall have the same force and effect as if set out in the body of such Transaction Document or Conditions Module. Any reference to a Transaction Document or Conditions Module shall include any such Schedule, Appendix or Exhibit.

#### 5. HEADINGS

Headings in any Transaction Document or Conditions Module and herein are for ease of reference only.

#### 6. NUMBER

In any Transaction Document or Conditions Module and herein, save where the context otherwise requires, words importing the singular number include the plural and *vice versa*.

#### 7. SUCCESSORS

Save where the context otherwise requires, references in any Transaction Document or Conditions Module and herein to any party to the Transaction Documents or Conditions Module shall include references to its successors (or, in the case of a Reference Entity, its Successors (as defined in the Credit-Linked Definitions Module)) and assigns, whether in security or otherwise, whomsoever.

#### 8. MISCELLANEOUS

In each Transaction Document or Conditions Module, unless the contrary intention appears, a reference to:

(a) **"assets"** includes properties, revenues and rights of every description;

an **"authorisation"** includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration and notarisation;

a **"month"** is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that, if there is no numerically corresponding day in the month in which that period ends, that period shall end on the last Business Day in that calendar month;

a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental body, agency, department or regulatory, self-regulatory or other authority or organisation; and

(b) a time of day is a reference to London time.

## FORM OF ASSET SWAP CONFIRMATION

**BANK OF AMERICA, NATIONAL ASSOCIATION  
101 S. TRYON STREET  
CHARLOTTE, NC 28255  
USA**

23 March 2011

XENON CAPITAL PUBLIC LIMITED COMPANY  
5 Harbourmaster Place  
International Financial Services Centre  
Dublin 1  
Ireland

RE: TRANSACTION (SERIES 224)  
Ref: 58955057, 58954737, 58989598, 58963482, 58963807

Dear Sir or Madam,

The purpose of this communication is to confirm the terms and conditions of the Swap Transaction entered into between Bank of America, National Association (**Party A**) and Xenon Capital Public Limited Company (**Party B**) on the date hereof (the **Transaction**). This communication constitutes a **Confirmation** as referred to in the Agreement specified below.

This Confirmation supplements, forms part of, and is subject to, the 1992 ISDA Master Agreement (Multicurrency – Cross Border) dated as of 23 March 2011 (the **Agreement**), between you and us. The Transaction relates to the issue by Party B of its Series 224 EUR 17,500,000 Limited Recourse Floating Rate Commodity Index-Linked Secured Notes due 2016 (the **Securities**). All the provisions contained in the Agreement govern this Confirmation except as expressly modified below.

The definitions and provisions contained in (i) the 2006 ISDA Definitions (the **2006 Definitions**) and (ii) the 2003 ISDA Credit Derivatives Definitions as supplemented by the 2009 ISDA Credit Derivatives Determination Committees, Auction Settlement and Restructuring Supplement to the 2003 ISDA Credit Derivatives Definitions (the **Credit Derivatives Definitions**), each as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation by this reference. Any reference in the 2006 Definitions to a **Swap Transaction** shall be deemed to include references to a **Transaction** under this Confirmation. In the event of any inconsistency between the 2006 Definitions and the Credit Derivatives Definitions, the 2006 Definitions shall prevail. In the event of any inconsistency between (i) the 2006 Definitions or the Credit Derivatives Definitions and (ii) the provisions of this Confirmation, the provisions of this Confirmation shall prevail. Any terms used in this Transaction and not otherwise defined herein shall be deemed to have the meanings given to them in the trust instrument dated 23 March 2011 (as amended and/or supplemented from time to time) between, *inter alios*, Party B and HSBC Corporate Trustee Company (UK) Limited and relating to the Securities.

The terms of the Transaction to which this Confirmation relates are as follows:

## 1. General Terms

|                    |  |
|--------------------|--|
| Trade Date:        | 23 February 2011.  |
| Effective Date:    | 23 March 2011.   |
| Termination Date:  | 30 November 2016, subject to adjustment in accordance with the Modified Following Business Day Convention. |
| Calculation Agent: | Party A.   |

## 2. Party A Payment Amounts

### Floating Amounts I:

|                                      |  |
|--------------------------------------|--|
| Floating Rate Payer I:               | Party A.   |
| Floating Rate Payer I Amounts:       | An amount in EUR equal to the product of (i) the Interest Amount payable by Party B in respect of each Security on such day and (ii) the number of Securities outstanding on such day. |
| Floating Rate Payer I Payment Dates: | Each Interest Payment Date in respect of the Securities.   |

### Fixed Amounts

|                                 |   |
|---------------------------------|---|
| Fixed Rate Payer:               | Party A.  |
| Fixed Rate Payer Payments:      | The Fixed Rate Payer shall pay to Party B an amount in EUR equal to 1.7 per cent. of the Aggregate Outstanding Principal Amount of the Securities on each Fixed Rate Payer Payment Date (or such other rate as determined from time to time by Party A and notified to Party B), on such Fixed Rate Payer Payment Date. |
| Fixed Rate Payer Payment Dates: | 30 November of each year, commencing on (and including) 30 November 2011.   |

## 3. Party B Payment Amounts

### Floating Amounts I:

|                                 |   |
|---------------------------------|---|
| Floating Rate Payer II:         | Party B.  |
| Floating Rate Payer II Amounts: | Party B shall pay to Party A:<br><br>(i) amounts equal to all amounts actually paid by the relevant Underlying Obligor in respect of each Asset Swap Charged Asset, in respect of interest, principal and other distributions (such amounts collectively, the <b>Charged Asset Credit Risky Flows</b> ) on the day such amounts are actually paid by the relevant Underlying Obligor; and |

- (ii) on the first London Business Day following the end of each calendar month, all interest earned and received by Party B from the Custodian in respect of the Custodian Account.

#### 4. Final Exchange Amounts

|                                |  |
|--------------------------------|--|
| Party A Final Exchange Date:   | The Termination Date.  |
| Party A Final Exchange Amount: | Party A will pay to Party B the Aggregate Outstanding Principal Amount of the Securities on the Party A Final Exchange Date. |
| Party B Final Exchange Date:   | The Termination Date.  |
| Party B Final Exchange Amount: | Party B will pay and/or deliver (as applicable) to Party A the Asset Swap Charged Assets on the Party B Final Exchange Date. |

#### 5. Party A Substitution and Replenishment Option

- (i) On any Business Day, Party A (acting as principal) may elect, in its sole and absolute discretion, upon notice to Party B (containing information substantially in the form set out in Annex A), with a copy to the Custodian and the Trustee (a **Substitution and Replenishment Option Notice**), to substitute any of the Asset Swap Charged Assets as follows. Promptly upon receipt of such Substitution and Replenishment Option Notice, the Issuer shall direct the Custodian to:
  - (a) transfer, on behalf of the Issuer, each Asset Swap Charged Asset specified by Party A in such Substitution and Replenishment Option Notice (each an **Outgoing Asset**) to Party A against payment by Party A of the Current Market Value of such Outgoing Asset (as specified in such Substitution and Replenishment Option Notice), on a delivery versus payment basis on the date specified by Party A; and
  - (b) pay to Party A the sale proceeds of such Outgoing Asset Swap Charged Assets, on behalf of the Issuer, against delivery of Replacement Asset Swap Charged Assets (selected by Party A (acting as principal) and which shall have, in aggregate, an Initial Market Value equal to the aggregate Current Market Value of all such Outgoing Asset Swap Charged Assets) on or around the date of the Substitution and Replenishment Option Notice by Party A, on a delivery versus payment basis.
- (ii) In relation to any Asset Swap Charged Asset that is redeemed in whole or in part, Party A shall, promptly following the first Wednesday (or if Wednesday is not a London Business Day, the next following London Business Day) following the date of such redemption (a) deliver a Substitution and Replenishment Option Notice to Party B designating Replacement Asset Swap Charged Assets with an Initial Market Value equal to the product of (A) the Initial Market Value of such Asset Swap Charged Asset and (B) the Applicable Percentage and (b) repay the principal proceeds received by it under this Transaction (pursuant to paragraph 3 above) in respect of such redemption (the **Repaid Proceeds**), to Party B to enable Party B to purchase such Replacement Asset Swap Charged Assets from Party A. Promptly upon receipt of such Substitution and Replenishment Option Notice, the Issuer shall direct the Custodian to use such Repaid Proceeds to purchase, on behalf of the Issuer, such Replacement Asset Swap Charged Assets for an amount equal to such Repaid Proceeds, on a delivery versus payment basis.

## 6. **Party A Replacement Obligation**

If an Asset Swap Charged Asset becomes a Defaulted Charged Asset (as determined by the Calculation Agent in its sole and absolute discretion), Party B shall deliver such Defaulted Charged Asset to Party A, in return for which Party A shall pay to the Issuer an amount equal to the Initial Market Value of such Defaulted Charged Asset, on a delivery versus payment basis. Party A shall deliver a Substitution and Replenishment Option Notice to Party B identifying a Replacement Charged Asset with the same Initial Market Value as the Defaulted Charged Asset and Party B shall apply the cash payment received from Party A to purchase such Replacement Charged Asset from Party A, on a delivery versus payment basis.

## 7. **Amendments to Credit Derivatives Definitions**

The Credit Derivatives Definitions shall be amended as follows:

- (i) references therein to "Reference Entity" shall be deleted and replaced with references to "Underling Obligor in respect of the relevant Asset Swap Charged Assets" and all provisions shall be construed accordingly;
- (ii) references therein to the "related Confirmation" shall be deleted and replaced with references to "the applicable Physical Settlement Matrix, in respect of the Transaction Type relating to the applicable Asset Swap Charged Asset";
- (iii) in the definition of "Repudiation/Moratorium", the words "Repudiation/Moratorium Evaluation Date" shall be deleted and replaced with the words "Maturity Date";
- (iv) in the definition of "Restructuring" the words "Credit Event Backstop Date" shall be deleted and replaced with the words "Trade Date"; and
- (v) the definition of "Obligation" shall be deleted and replaced with the following:

**"Obligation"** means, in respect of an Asset Swap Charged Asset, any obligation of the relevant Underlying Obligor for the payment or repayment of money (whether such obligation is present or future, contingent or otherwise, or as principal or surety or otherwise), including, without limitation, the Asset Swap Charged Asset; and

- (vi) Article III (*Conditions to Settlement*), Article V (*Fixed Amounts*), Article VI (*General Terms Relating to Settlement*), Article VII (*Terms Relating to Cash Settlement*), Article VIII (*Terms Relating to Physical Settlement*), Article IX (*Additional Representations and Agreements of the Parties*), Article X (*Novation Provisions*) and Article (XII) (*Terms Relating to Auction Settlement*) shall not apply.

For the avoidance of doubt, the occurrence of either a DC Credit Event Announcement or a DC No Credit Event Announcement shall not affect (and the Calculation Agent shall not be obliged to take into account for the purposes of) the determination by the Calculation Agent of whether or not a Credit Event has occurred.

## 8. **Additional Definitions**

**Applicable Percentage** means, in relation to a portion of a Charged Asset that has been redeemed in part, the proportion that the redeemed notional amount of such Charged Asset bears to the notional amount of such Charged Asset held by the Issuer immediately prior to such redemption, expressed as a percentage.

**Credit Event** means one or more of Bankruptcy, Failure to Pay, Obligation Acceleration, Obligation Default, Repudiation/Moratorium or Restructuring, as specified in the relevant Physical Settlement Matrix in respect of the Transaction Type applicable in relation to the relevant Asset Swap Charged Assets. If an occurrence would otherwise constitute a Credit Event, such occurrence will constitute a Credit Event whether or not such occurrence arises directly or indirectly from, or is subject to a defense based upon: (a) any lack or alleged lack of authority or capacity of an Underlying Obligor to enter into any Obligation, (b) any actual or alleged unenforceability, illegality, impossibility or invalidity with respect to any Obligation, however described, (c) any applicable law, order, regulation, decree or notice, however described, or the promulgation of, or any change in, the interpretation by any court, tribunal, regulatory authority or similar administrative or judicial body with competent or apparent jurisdiction of any applicable law, order, regulation, decree or notice, however described, or (d) the imposition of, or any change in, any exchange controls, capital restrictions or any other similar restrictions imposed by any monetary or other authority, however described.

**Current Market Value** means, in respect of an Outgoing Asset, the EUR amount specified in respect of such Outgoing Asset in the related Substitution and Replenishment Option Notice (being a EUR amount determined by Party A by reference to the notional amount of such Outgoing Asset, the market value and spot rate of exchange (if applicable) on or around the relevant substitution date determined by Party A in its sole and absolute discretion). For the avoidance of doubt this may be a different amount to the Initial Market Value of such Outgoing Asset.

**Defaulted Charged Asset** means any Asset Swap Charged Asset in respect of which:

- (a) there has occurred, and is continuing beyond the grace period applicable in respect of such Asset Swap Charged Asset, a default as to payment of principal and/or interest, but only until such default or event of default has been cured or waived; and/or
- (b) a Credit Event has occurred in respect of the relevant Underlying Obligor and/or one or more of its Obligations,

in each case as determined by the Calculation Agent, acting in its sole and absolute discretion.

**Eligibility Criteria** means (a) in respect of cash, such cash must be denominated in any of CAD, EUR, JPY, GBP, USD, CHF or AUD and (b) in respect of securities:

- (i) such securities must be denominated in any of CAD, EUR, JPY, GBP, USD, CHF or AUD;
- (ii) the issuer of such securities must have a rating of at least "B3" or "B-" by any one of Moody's, S&P and Fitch;
- (iii) such securities must not be an obligation of Bank of America Corporation or Merrill Lynch & Co., Inc. (or any affiliate thereof);
- (iv) such securities must not be an equity security, a convertible security or an exchangeable security;
- (v) no event of default may be outstanding in relation to such securities;
- (vi) such securities must be capable of being acquired by the Issuer without any breach of any applicable selling restriction or legal, regulatory or contractual provisions restricting its transferability;
- (vii) such securities must not be an obligation pursuant to which future advances may be required

to be made to the obligor thereunder;

- (viii) such securities must not be an obligation that is an asset-backed security, a structured finance security, or a security whose repayment is subject to the non-occurrence of certain catastrophes;
- (ix) such securities must not be an obligation that requires the Issuer to be registered under any applicable Irish insurance legislation; and
- (x) such securities must be a "qualifying asset" for the purposes of Section 110 of the Taxes Consolidation Act 1997, and the acquisition of such securities shall not give rise to Irish stamp duty.

**Initial Market Value** means the EUR amount (i) in respect of each Initial Asset Swap Charged Asset, as set out in Annex A to the Issue Terms (being a EUR amount determined by Party A by reference to the Nominal Amount, the market value and a spot rate of exchange (if applicable) on or around the Issue Date determined by Party A in its sole and absolute discretion) and (ii) in respect of each Replacement Charged Asset, the Initial Market Value specified in respect of such Replacement Charged Asset in the related Substitution and Replenishment Option Notice (being a EUR amount determined by Party A by reference to the Nominal Amount, the market value and spot rate of exchange (if applicable) on or around the relevant substitution date, determined by Party A in its sole and absolute discretion). Following a partial redemption of an Asset Swap Charged Asset and replenishment in accordance with paragraph 5(ii) above, Party A shall adjust in its sole and absolute discretion the Initial Market Value applicable to the remaining portion of such Charged Asset.

**London Business Day** means a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in London.

**Nominal Amount** means (i) in respect of an Initial Asset Swap Charged Asset, as set out in Annex A to the Issue Terms (being the notional amount of such Initial Asset Swap Charged Asset specified in their currency of issue) and (ii) in respect of a Replacement Charged Asset, as set out in the related Substitution and Replenishment Option Notice (being the notional amount of such Replacement Charged Asset in their currency of issue).

**Physical Settlement Matrix** means the Credit Derivatives Physical Settlement Matrix dated January 20, 2011 (in respect of the Initial Asset Swap Charged Assets or, in respect of any Replacement Asset Swap Charged Assets, as most recently amended or supplemented as at the date such Asset Swap Charged Assets are purchased by the Issuer) and as published by ISDA, provided that any reference therein to "Confirmation" shall be deemed to be a reference to the relevant Substitution and Replenishment Option Notice.

**Replacement Charged Asset** means any assets specified by Party A in the Substitution and Replenishment Option Notice, which shall satisfy the Eligibility Criteria on or about the date of the relevant Substitution and Replenishment Option Notice or, to the extent that the relevant Outgoing Asset (excluding any Defaulted Charged Asset) did not satisfy the Eligibility Criteria immediately prior to its substitution or redemption, as the case may be, shall not worsen the degree of such non-compliance.

**Transaction Type** means in respect of an Asset Swap Charged Asset, the transaction type determined by the Asset Swap Counterparty in its sole and absolute discretion.

## 9. Amendments to Close-out Amount

Notwithstanding the definition of Close-out Amount, the Close-out Amount for the purposes of

Section 6 (*Early Termination*) of the Agreement shall be equal to the amount which Party B would be required to pay (or receive, as applicable) to enter into a swap transaction with a market dealer that would have the effect of preserving for Party B the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by Party A and Party B under Section 2(a)(i) of the Agreement that would have been required after the relevant date, and for the purposes of which, the value of any payments or deliveries scheduled to be made between Party A and Party B that are contingent on the occurrence of a default in respect of an Underlying Obligor in respect of Asset Swap Charged Assets shall be calculated on the basis of risky discount factors, as determined by reference to the prevailing credit default swap level in the relevant currency for the relevant Underlying Obligor. To the extent that any such payments to and from Party B are in different currencies, the Close-out Amount shall be determined by reference to the appropriate cross-currency basis swap(s) (as determined by the Calculation Agent in its sole discretion).

**10. Discharge of payment obligation**

The obligation of Party B to pay an amount to Party A pursuant to paragraph 3 (*Party B Payment Amounts*) shall be deemed to be discharged where such amount relates to a Charged Asset Credit Risky Flow in respect of an Asset Swap Charged Asset which Party B has transferred to Party A pursuant to the Asset Swap CSA (and for the avoidance of doubt, which has not been transferred back to Party B as at the relevant Payment Date).

**11. Non-Reliance Representation**

Each party (other than Banc of America Securities Limited) represents to the other party (other than Banc of America Securities Limited) that:

- (a) it is acting for its own account, and has made its own independent decisions to enter into the Transaction evidenced by this Confirmation and as to whether such Transaction is appropriate or proper for it based on its own judgement and upon advice from such legal, tax, regulatory, accounting and/or other advisors as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into such Transaction, it being understood that information and explanations related to the terms and conditions of such Transaction shall not be considered investment advice or a recommendation to enter into such Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of such Transaction;
- (b) it is capable of assessing the merits of and understanding (through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction evidenced by this Confirmation. It is also capable of assuming, and assumes, the financial and other risks of such Transaction; and
- (c) the other party to the Transaction is not acting as a fiduciary or an adviser for it in respect of the Transaction evidenced by this Confirmation.

**12. Governing Law:**

This Confirmation and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England.

**13. Termination Currency:**

The termination currency shall be EUR.



**14. Contracts (Rights of Third Parties) Act 1999:**

A person who is not a party to this Transaction has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Transaction, but this does not affect any right or remedy of the third party which exists or is available apart from that Act.

**15. Notice and Account Details:**

Notices to Party A: Bank of America, National Association  
101 S. Tryon Street  
Charlotte  
NC 28255  
U.S.A.

Payments to Party A: **USD:**  
  
BANK OF AMERICA, N.A, LONDON  
(SWIFT:BOFAGB22)  
FAO: Bank of America, N.A, Charlotte NC  
Swift.: BOFAUS6SGDS  
Account: 600810073039

**CAD:**  
  
Bank of America NA, Canada  
Swift: BOFACATT  
FAO: Bank of America, N.A, Charlotte, NC  
Swift: BOFAUS6SGDS  
Account: 44313202

**EUR:**  
  
Bank of America NA London (Direct via TARGET)  
Swift: BOFAGB22  
FAO: Bank of America NA Charlotte  
Swift: BOFAUS6SGDS  
Account: GB16 BOFA 1650 5010 0730 39

**JPY:**  
  
Bank of America NA Tokyo  
Swift: BOFAJPJX  
FAO: Bank of America, N.A, Charlotte, NC  
Swift: BOFAUS6SGDS  
Account: 96943015

**GBP:**  
  
Bank of America NA London  
Sort Code: 16-50-50  
SWIFT: BOFAGB22  
FAO: Bank of America NA Charlotte  
SWIFT: BOFAUS3DCRD  
Account: GB91 BOFA 1650 5010 0734 35

**CHF:**

Bank of America London, Re Switzerland  
Swift: BOFAGB3SSWI  
FAO: Bank of America, N.A, Charlotte  
Swift: BOFAUS3DCRD  
Account: CH42 0872 6000 0966 6602 4

**AUD:**

Bank of America NA Sydney  
Swift: BOFAAUSX  
FAO: Bank of America, N.A, Charlotte  
Swift: BOFAUS3DCRD  
Account: 13482052

Notices to Party B:

5 Harbourmaster Place  
International Financial Centre  
Dublin 1  
Ireland

Attention: Eimer McGrath  
Tel: 00 353 1680 6000  
Fax: 00 353 1680 6050

Payments to Party B:

HSBC Bank plc, London  
(SWIFT: MIDLGB22)

For the account of: Xenon Capital plc Series 224  
assigned to HSBC Corporate Trustee Company (UK)  
Limited as Trustee to Xenon Capital plc  
Account Number: 70951539.

**17. Purchases and further issues**

In the event of a purchase by Party B of some but not all of the Securities pursuant to Condition 9 (*Purchase*) or a further issuance of Securities pursuant to Condition 20 (*Further Issues*), the Calculation Agent shall, without the consent of Party A, Party B or any other parties, adjust the provisions of this Confirmation to reflect such partial purchase or further issue and to preserve the economic equivalence of the Transaction documented hereunder after such partial purchase or further issue.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to us by facsimile transmission.

Yours faithfully,

**BANC OF AMERICA SECURITIES LIMITED,  
acting as agent for Bank of America, National  
Association**

By:

Accepted and confirmed as  
of the date written above:

Authorised Signatory

Signed by a duly authorised attorney of

**XENON CAPITAL PUBLIC LIMITED COMPANY**

By:

## ANNEX A

### FORM OF SUBSTITUTION AND REPLENISHMENT OPTION NOTICE

*This notice (which may be by email) should be delivered to the Issuer with a copy to the Custodian and the Trustee and should contain substantially the information set out below.*

To: Xenon Capital Public Limited Company  
(the **Issuer**)

Copy: HSBC Bank plc  
(the **Custodian**)

Copy: HSBC Corporate Trustee Company (UK) Limited  
(the **Trustee**)

From: Bank of America, National Association

Date: **[Insert Date]**

This notice is given by us for the purposes of paragraph 5 (*Party A Substitution and Replenishment Option*) of the Asset Swap Agreement and shall take effect as notice from us that on **[insert Trade Date and Settlement Date details]** we wish to substitute the following Asset Swap Charged Assets (**Outgoing Asset(s)**):

| OUTGOING ASSET(S) |                    |                      |                            |                     |
|-------------------|--------------------|----------------------|----------------------------|---------------------|
| ISIN              | UNDERLYING OBLIGOR | NOMINAL AMOUNT (CCY) | CURRENT MARKET VALUE (EUR) | DELIVERY TO ACCOUNT |
|                   |                    |                      |                            |                     |
|                   |                    |                      |                            |                     |

for the following replacement Asset Swap Charged Assets (the **Replacement Asset Swap Charged Assets**):

| REPLACEMENT ASSET SWAP CHARGED ASSETS |                    |          |                      |                            |                       |
|---------------------------------------|--------------------|----------|----------------------|----------------------------|-----------------------|
| ISIN                                  | UNDERLYING OBLIGOR | CURRENCY | NOMINAL AMOUNT (CCY) | INITIAL MARKET VALUE (EUR) | DELIVERY FROM ACCOUNT |
|                                       |                    |          |                      |                            |                       |
|                                       |                    |          |                      |                            |                       |

The Asset Swap Charged Assets as at the date of this notice are therefore:

| ASSET SWAP CHARGED ASSETS |                    |          |                         |                                  |
|---------------------------|--------------------|----------|-------------------------|----------------------------------|
| ISIN                      | UNDERLYING OBLIGOR | CURRENCY | NOMINAL<br>AMOUNT (CCY) | INITIAL<br>MARKET<br>VALUE (EUR) |
|                           |                    |          |                         |                                  |
|                           |                    |          |                         |                                  |

Yours truly,

Bank of America, National Association

By:

Name:

Title:

## FORM OF COMMODITY SWAP CONFIRMATION

MERRILL LYNCH INTERNATIONAL  
MERRILL LYNCH FINANCIAL CENTRE  
2 KING EDWARD STREET  
LONDON EC1A 1HQ  
(REGISTERED NO. 2312079)

23 March 2011



XENON CAPITAL PUBLIC LIMITED COMPANY  
5 Harbourmaster Place  
International Financial Services Centre  
Dublin 1  
Ireland

RE: TRANSACTION (SERIES 224)  
Ref: 8666675

Dear Sir or Madam,

The purpose of this communication is to confirm the terms and conditions of the Swap Transaction entered into between Merrill Lynch International (**Party A**) and Xenon Capital Public Limited Company (**Party B**) on the date hereof (the **Transaction**). This communication constitutes a **Confirmation** as referred to in the Agreement specified below.

This Confirmation supplements, forms part of, and is subject to, the 1992 ISDA Master Agreement (Multicurrency – Cross Border) dated as of 23 March 2011 (the **Agreement**), between you and us. The Transaction relates to the issue by Party B of its Series 224 EUR 17,500,000 Limited Recourse Floating Rate Commodity Index-Linked Secured Notes due 2016 (the **Securities**). All the provisions contained in the Agreement govern this Confirmation except as expressly modified below.

The definitions and provisions contained in the 2006 ISDA Definitions, as published by the International Swaps and Derivatives Association, Inc. (the **2006 Definitions**), are incorporated into this Confirmation by this reference. Any reference in the 2006 Definitions to a **Swap Transaction** shall be deemed to include references to a **Transaction** under this Confirmation. In the event of any inconsistency between the 2006 Definitions and the provisions of this Confirmation, the provisions of this Confirmation shall prevail. Any terms used in this Transaction and not otherwise defined herein shall be deemed to have the meanings given to them in the trust instrument dated 23 March 2011 (as amended and/or supplemented from time to time) between, *inter alios*, Party B and HSBC Corporate Trustee Company (UK) Limited and relating to the Securities.

The terms of the Transaction to which this Confirmation relates are as follows:

### 1. General Terms

Trade Date: 23 February 2011.  
Effective Date: 23 March 2011.

Termination Date: 30 November 2016, subject to adjustment in accordance with the Modified Following Business Day Convention.

Calculation Agent: Party A.

## **2. Party A Payment Amounts**

Fixed Rate Payer I: Party A.

Fixed Rate Payer Payments I: The Fixed Rate Payer I shall pay to Party B on the Maturity Date an amount equal to the sum of (i) the product of (a) the Final Redemption Amount and (b) the number of Securities outstanding on such date minus (ii) the Aggregate Outstanding Principal Amount.

## **3. Party B Payment Amounts**

Fixed Rate Payer II: Party B.

Fixed Rate Payer Payments II: The Fixed Rate Payer II shall pay to Party A 1.7 per cent. of the Aggregate Outstanding Principal Amount of the Securities on each Fixed Rate Payer Payment Date II (or such other rate as determined from time to time by Bank of America, National Association pursuant to the "Fixed Amounts" provisions of the Asset Swap Agreement), on such Fixed Rate Payer Payment Date II.

Fixed Rate Payer Payment Dates II: 30 November of each year, commencing on (and including) 30 November 2011.

## **4. Amendments to Close-out Amount**

Notwithstanding the definition of Close-out Amount, the Close-out Amount for the purposes of Section 6 (*Early Termination*) of the Agreement shall be equal to the amount which Party B would be required to pay (or receive, as applicable) to enter into a swap transaction with a market dealer that would have the effect of preserving for Party B the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by Party A and Party B under Section 2(a)(i) of the Agreement that would have been required after the relevant date, and for the purposes of which, the value of any payments or deliveries scheduled to be made between Party A and Party B that are contingent on the occurrence of a default in respect of an issuer of Asset Swap Charged Assets shall be calculated on the basis of risky discount factors, as determined by reference to the prevailing credit default swap level in the relevant currency for the relevant issuer. To the extent that any such payments to and from Party B are in different currencies, the Close-out Amount shall be determined by reference to the appropriate cross-currency basis swap(s) (as determined by the Calculation Agent in its sole discretion).

## **5. Non-Reliance Representation**

Each party represents to the other party that:

- (a) it is acting for its own account, and has made its own independent decisions to enter into the Transaction evidenced by this Confirmation and as to whether such Transaction is appropriate or proper for it based on its own judgement and upon advice from such legal,

(b) it is capable of assessing the merits of and understanding (through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction evidenced by this Confirmation. It is also capable of assuming, and assumes, the financial and other risks of such Transaction; and

(c) the other party to the Transaction is not acting as a fiduciary or an adviser for it in respect of the Transaction evidenced by this Confirmation.

This Confirmation and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England.

The termination currency shall be EUR.

A person who is not a party to this Transaction has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Transaction, but this does not affect any right or remedy of the third party which exists or is available apart from that Act.

Attention: Eimer McGrath  
Tel: 00 353 1680 6000



Fax: 00 353 1680 6050

Payments to Party B:

HSBC Bank plc, London  
(SWIFT: MIDLGB22)

For the account of: Xenon Capital plc Series 224  
assigned to HSBC Corporate Trustee Company (UK)  
Limited as Trustee to Xenon Capital plc  
Account Number: 70951539.

**10. Purchases and further issues**

In the event of a purchase by Party B of some but not all of the Securities pursuant to Condition 9 (*Purchase*) or a further issuance of Securities pursuant to Condition 20 (*Further Issues*), the Calculation Agent shall, without the consent of Party A, Party B or any other parties, adjust the provisions of this Confirmation to reflect such partial purchase or further issue and to preserve the economic equivalence of the Transaction documented hereunder after such partial purchase or further issue.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to us by facsimile transmission.

Yours faithfully,

**MERRILL LYNCH INTERNATIONAL**

By:

Accepted and confirmed as  
of the date written above:

Authorised Signatory

Signed by a duly authorised attorney of

**XENON CAPITAL PUBLIC LIMITED COMPANY**

By:

## DESCRIPTION OF THE COMMODITY INDEX

### 1. GENERAL DESCRIPTION

The Merrill Lynch Commodity Index Extra Enhanced Benchmark ADLS Long Short (the **MLCXADLS**) is a modified version of the Merrill Lynch Commodity index eXtra (the **MLCX**). The MLCX is a rule-driven commodity index where commodity contracts are initially selected by liquidity and then weighted by the importance of each commodity in the global economy, with particular emphasis on downstream commodities. Different to other commodity indices, the MLCX has a semi-continuous contract rolling schedule. The index is available as Excess Return index.

Further information in respect of the performance and volatility of the MLCXADLS can be found on Bloomberg (ticker: "MLCXADLS Index <GO>").

The MLCXADLS shall be calculated pursuant to the MLCX Handbook (available on the following website: [http://gmi.ml.com/mlcx/downloads/MLCX\\_Handbook\\_2011.pdf](http://gmi.ml.com/mlcx/downloads/MLCX_Handbook_2011.pdf)) with the following modifications:

**Preliminary Definitions (for the purposes of this "Description of the Commodity Index" only):**

**Contracts** are the futures contracts included in the MLCXLDA ER Index and in the DJ-UBS ER Index.

**DJ-UBS ER Index** means an index designed to be a highly liquid and diversified benchmark for commodities investments. The index provides broad-based exposure to commodities as an asset class, since no single commodity or commodity sector dominates the Index. Rather than being driven by micro-economic events affecting one commodity market or sector, the diversified commodity exposure of the index potentially reduces volatility in comparison to non-diversified commodity baskets.

**Index** means the MLCXADLS.

**Index Business Day** is a day on which the New York Mercantile Exchange (NYMEX) is open for trading.

**A Market Disruption Event** means the occurrence on any Index Business Day of any one or more of the following circumstances: (1) A material limitation, suspension, or disruption of trading in one or more Contracts which results in a failure by the exchange on which each such Contract is traded to report an exchange published settlement price for such contract on the day on which such event occurs or any succeeding day on which it continues. (2) The exchange published settlement price for any Contract included a "limit price", which means that the exchange published settlement price for such contract for a day has increased or decreased from the previous day's exchange published settlement price by the maximum amount permitted under applicable exchange rules. (3) Failure by the applicable exchange or other price source to announce or publish the exchange published settlement price for any Contract. (4) A suspension of trading in one or more Contracts, for which the trading does not resume at least ten (10) minutes prior to the scheduled or rescheduled closing time.

**MLCXLDA ER Index** is a commodity index from the MLCX family which is designed to provide enhanced returns by holding longer dated commodity contracts, relative to MLCX.

The **Rebalancing Date** is the last Index Business Day of each month.

Terms used but not otherwise defined will have the meanings given in the MLCX Handbook.

## 2. REBALANCING AND INDEX CALCULATION

On any Index Business Day  $t$ , the Index is calculated as:

$$I_t = I_R \times \left[ 1 + \left( \frac{A_t}{A_R} - \frac{D_t}{D_R} \right) \right]$$

where  $A_t$  represents the settlement value of the MLCXLDA ER Index,  $D_t$  represents the settlement value of the DJ-UBS ER Index,  $I_R$  represents the value of the index on the Rebalancing Day  $R$  prior to  $t$ ,  $A_R$  represents the MLCXLDA ER Index settlement value on the Rebalancing Day  $R$  prior to  $t$ ,  $D_R$  represents the DJ-UBS ER Index settlement value on the Rebalancing Day  $R$  prior to  $t$  as published by Bloomberg. The Index is set to 100,  $I_0=100$ , at inception (December 31 1998), which is considered the first rebalancing day for the purpose of index calculation.

If, on any Rebalancing Day, there is a Market Disruption Event for one or more Contracts relating to one or more Index Components, the Index will be calculated as follows: (1) With respect to each Contract, which is not affected by the Market Disruption, the price will be based on the exchange published settlement price on the Rebalancing Day (2) With respect to each Contract which is affected by Market Disruption, the price will be based on the exchange published settlement price of each such contract on the first day following the Rebalancing Day in which no Market Disruption is occurring with respect to such contract. If for one or more of such Contracts the Market Disruptions prolongs for three consecutive Index Business Days, on the fourth Index Business Day the index shall be calculated using the Contract price at which Merrill Lynch is able to execute the rebalancing on a best effort basis. In this circumstance there will not be a Daily Index Settlement Value for the days on which the Market Disruption Event has occurred and during these three consecutive Index Business days the Daily Index Settlement Value as of the Rebalancing Day will not be published. The adjustments referred to in this section do not cover all events that may affect the value of the Index. Accordingly, there might be situations in which the Index may not be calculated and published.

## 3. INDEX DISCLAIMERS

**The Merrill Lynch Commodity Index eXtra—Enhanced Benchmark ADLS Long Short Index MLCXADLS and the Merrill Lynch Commodity Enhanced Benchmark Excess Return Index MLCXLDAER (each, a ML Index and together, the ML Indices)**

Merrill Lynch Pierce Fenner & Smith Limited, as index publisher, and Merrill Lynch Commodities, Inc., as index manager, make no representation or warranty, express or implied, to holders of the Securities or any member of the public regarding the advisability of purchasing the Securities, particularly, or the ability of each ML Index to track general commodity market performance. Each ML Index is determined, composed and calculated by the index publisher and the index manager without regard to the Securities. The index publisher and the index manager have no obligation to take the needs of holders of the Securities into consideration in determining, composing or calculating each ML Index. The index publisher and the index manager are not responsible for and have not participated in the determination of the timing of, prices at or quantities of the Securities to be issued. The index publisher and the index manager have no obligation or liability in connection with the administration and marketing of the Securities.

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#### **The Dow Jones-UBS Commodity Index—Excess Return (the DJUBS Index)**

The Securities are not sponsored, endorsed, sold, or promoted by Dow Jones, UBS, UBS Securities LLC (**UBS Securities**), or any of their subsidiaries or affiliates. None of Dow Jones, UBS, UBS Securities, or any of their subsidiaries or affiliates makes any representation or warranty, express or implied, to the owners of or counterparts to the Securities or any member of the public regarding the advisability of investing in securities or commodities generally or in the Securities particularly. The only relationship of Dow Jones, UBS, UBS Securities, or any of their subsidiaries or affiliates to Merrill Lynch is the licensing of certain trademarks, trade names and service marks and of the DJUBS index which is determined, composed, and calculated by Dow Jones in conjunction with UBS Securities without regard to Merrill Lynch or the Securities. Dow Jones and UBS Securities have no obligation to take into account the needs or the needs of the owners of the Securities into consideration in determining, composing, or calculating the DJUBS Index. None of Dow Jones, UBS, UBS Securities, or any of their respective subsidiaries or affiliates is responsible for or has participated in the determination of the timing of, prices at, or quantities of the Securities to be issued or in the determination or calculation of the equation by which the Securities are to be converted into cash. None of Dow Jones, UBS, UBS Securities, or any of their subsidiaries or affiliates shall have any obligation or liability, including, without limitation, to the holders of the Securities, in connection with the administration, marketing, or trading of the Securities. Notwithstanding the foregoing, UBS Securities and their respective subsidiaries and affiliates may independently issue and/or sponsor financial products unrelated to the Securities, but which may be similar to and competitive with the Securities. In addition, UBS, UBS Securities, and their subsidiaries and affiliates actively trade commodities, commodity indexes, and commodity futures (including the DJUBS Index and Dow Jones-UBS Commodity Index Total Return), as well as swaps, options, and derivatives which are linked to the performance of such commodities, commodity indexes, and commodity futures. It is possible that this trading actively will affect the level of the DJUBS Index and the value of the Securities.

Purchasers of the Securities should not conclude that the inclusion of a futures contract in the DJUBS Index is any form of investment recommendation of the future contract or the underlying exchange-traded physical commodity by Dow Jones, UBS, UBS Securities, or any of their subsidiaries or affiliates. The information in this Final Terms regarding the DJUBS Index components has been derived solely from publicly available documents. None of Dow Jones, UBS, UBS Securities, or any of their subsidiaries or affiliates has made due diligence inquiries with respect to the index components in connection with the Securities. None of Dow Jones, UBS, UBS Securities, or any of their subsidiaries or affiliates makes any representation that these publicly available documents or any other publicly available information regarding the index components,

including without limitation a description of factors that affect the prices of such components, are accurate or complete.

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**CREDIT SUPPORT TERMS MODULE**

**MARCH 2011 EDITION**

**to be incorporated by reference into the Trust Instrument  
as the "Credit Support Annex"  
in relation to an issue of repackaged Securities arranged by  
MERRILL LYNCH INTERNATIONAL**

## **CREDIT SUPPORT TERMS MODULE**

This Credit Support Terms Module sets out certain of the provisions of the credit support annex which supplements, forms part of, and is subject to each relevant swap agreement relating to Securities constituted and secured by the Trust Instrument in which it is specified that this Credit Support Terms Module is incorporated. The terms of this Credit Support Terms Module may be modified or supplemented by the Trust Instrument.

Upon the execution of the Trust Instrument by the parties thereto described as parties to the ISDA Master Agreement, Schedule and Credit Support Annex, such parties will be deemed to have entered into the International Swap and Derivatives Association, Inc. Credit Support Annex (Bilateral Form – Transfer) on the terms set out below, as modified and/or supplemented by the Trust Instrument. This Credit Support Terms Module shall take effect as paragraph 11 of the Credit Support Annex, which Credit Support Annex shall be deemed incorporated in this Credit Support Terms Module as amended herein or by any provision of the Trust Instrument. For such purpose, Party A shall be the Counterparty specified in the Issue Terms and Party B shall be the Issuer.



## Paragraph 11. Elections and Variables

### (a) **Base Currency and Eligible Currency**

- (i) **Base Currency** means EUR.
- (ii) **Eligible Currency** means the Base Currency, CAD, JPY, GBP, USD, CHF and AUD (and any successor currency to any such currency).

### (b) **Credit Support Obligations**

#### (i) ***Delivery Amount, Return Amount and Credit Support Amount.***

- (A) **Delivery Amount and Return Amount.** Notwithstanding Paragraph 2(a) and Paragraph 2(b), **Delivery Amount** means:

- (a) in respect of Party A (as Transferor) and any Valuation Date, an amount equal to:
  - (i) the greater of (1) the Termination Value in respect of the Transaction entered into between Party A and Party B pursuant to the Agreement (determined as if such Transaction was being terminated as of the relevant Valuation Time), as determined by the Valuation Agent in its sole and absolute discretion and (2) zero; minus
  - (ii) the market value of the Credit Support Balance held by (or on behalf of) Party B at the relevant Valuation Time, converted (if applicable) into EUR at the then prevailing spot rate of exchange (adjusted to include any prior Delivery Amount and to exclude any prior Return Amount, the transfer of which, in either case, has not yet been completed and for which the relevant Settlement Day falls on or after such Valuation Date), in each case as determined by the Valuation Agent acting in good faith and in a commercially reasonable manner, in its sole and absolute discretion,

provided that if such amount is negative, the absolute value of such amount shall be deemed to be a **Return Amount** applicable to Party B (as Transferee); and

- (b) in respect of Party B (as Transferor) and any Valuation Date, an amount equal to:
  - (i) if the Termination Value in respect of the Transaction entered into between Party A and Party B pursuant to the Agreement (determined as if such Transaction was being terminated as of the relevant Valuation Time) is negative, as determined by the Valuation Agent in its sole and absolute discretion, the absolute value of such Termination Value, and otherwise zero; minus
  - (ii) the market value of the Credit Support Balance held by Party A at the relevant Valuation Time, converted (if applicable) into EUR at the then prevailing spot rate of exchange (adjusted to include any

prior Delivery Amount and to exclude any prior Return Amount, the transfer of which, in either case, has not yet been completed and for which the relevant Settlement Day falls on or after such Valuation Date), in each case as determined by the Valuation Agent acting in good faith and in a commercially reasonable manner, in its sole and absolute discretion,

provided that if such amount is negative, the absolute value of such amount shall be deemed to be a **Return Amount** applicable to Party A (as Transferee).

(B) **Credit Support Amount:** not applicable.

(ii) ***Eligible Credit Support.***

(a) cash in an Eligible Currency, (b) any security that satisfies the Eligibility Criteria on or about the relevant Valuation Time and (c) where Party B is the Transferor any Asset Swap Charged Asset. The Valuation Percentage in respect of all Eligible Credit Support shall be 100 per cent.

(iii) ***Thresholds.***

(A) **Independent Amount** means with respect to Party A: not applicable.

**Independent Amount** means with respect to Party B: not applicable.

(B) **Threshold** means with respect to Party A: not applicable.

**Threshold** means with respect to Party B: not applicable.

(C) **Minimum Transfer Amount** means with respect to Party A and Party B, EUR 1,000,000 (or, in respect of Party B, the market value of the Eligible Credit Support held by (or on behalf of) Party B, if less).

(D) **Rounding.** The Delivery Amount and the Return Amount will be rounded up and down respectively to the nearest integral multiple of EUR50,000, subject to the maximum Return Amount being equal to the Credit Support Balance.

(c) **Valuation and Timing**

(i) **Valuation Agent** means Party A in all circumstances. For the avoidance of doubt, in the event that the Valuation Agent fails to perform any calculations or make any determinations required to be made by it in accordance with the provisions hereof it shall not constitute an Event of Default or Termination Event with respect to this Transaction.

(ii) **Valuation Date** means each Wednesday each week (or if such day is not a London Business Day, the next following London Business Day).

(iii) **Valuation Time** means the close of business London time on the London Business Day immediately preceding the Valuation Date or date of calculation, as applicable, provided that the calculations of Value will, as far as practicable, be made as of approximately the same time on the same date.

(iv) **Notification Time** means 4:00 p.m., London time, on a London Business Day.

- (v) **London Business Day** means a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in London.

(d) **Exchange Date**

**Exchange Date** has the meaning specified in Paragraph 3(c)(ii).

(e) **Distributions and Interest Amount**

- (i) **Interest Rate.** The **Interest Rate** in relation to the portion of the Credit Support Balance comprised of cash in an Eligible Currency will be the rate of interest quoted in respect of such Eligible Currency from time to time by the Custodian.

- (ii) **Distributions and Interest Amount.**

- (A) Paragraph 5(c)(i) is amended:

- (I) if Party A is the Asset Swap Counterparty, by the insertion of the following words at the beginning of the sentence:

- "Where the Transferee is Party B, "; and

- (II) by the deletion of the words "not later than the Settlement Day following each Distributions Date" and their replacement with the words "on each Distributions Date".

- (B) If Party A is the Asset Swap Counterparty, Paragraph 5(c)(ii) is deleted in its entirety and replaced with the following:

- "(ii) **Interest Amount.** Where the Transferee is Party B, the Transferee will transfer to the Transferor on the first London Business Day following the end of each calendar month (to the extent that Party B has earned and received from the Custodian such amount of interest) the relevant Interest Amount to the extent that a Delivery Amount would not be created or increased by the transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed a Valuation Date for this purpose)."

- (B) If Party A is the Commodity Swap Counterparty, Paragraph 5(c)(ii) is deleted in its entirety and replaced with the following:

- "(ii) **Interest Amount.** The Transferee will transfer to the Transferor on the first London Business Day following the end of each calendar month (where the Transferee is Party B, to the extent that Party B has earned and received from the Custodian such amount of interest) the relevant Interest Amount to the extent that a Delivery Amount would not be created or increased by the transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed a Valuation Date for this purpose)."

(f) **Address for Transfers**

Party A: To be notified to Party B by Party A at the time of the request for the transfer.

Party B: The CSA Custodian Account (as defined in the Trust Instrument).

(g) **Other Provisions**

(i) ***Early Termination***

The heading for Paragraph 6 shall be deleted and replaced with "Early Termination", the words "or a Termination Event" shall be added after the word "Default" in the first line of Paragraph 6.

(ii) ***Costs of Transfer on Exchange***

Notwithstanding Paragraph 8, Party A will be responsible for, and will reimburse Party B for, all transfer and other taxes and other costs involved in the transfer of Eligible Credit Support either from or to Party B.

(iii) ***Cumulative Rights***

The rights, powers and remedies of each Party under this Annex shall be in addition to all rights, powers and remedies given to each Party by the Agreement or by virtue of any statute or rule of law, all of which rights, powers and remedies shall be cumulative and may be exercised successively or concurrently without impairing the rights of each Party in the Credit Support Balance created pursuant to this Annex.

(iv) ***Amendment to Paragraph 2 (Credit Support Obligations)***

- (a) The words "upon a demand made by the Transferee" shall be deleted from Paragraph 2(a) (*Delivery Amount*) and replaced with the words "upon a demand made by the Valuation Agent".
- (b) The words "upon a demand made by the Transferor" shall be deleted from Paragraph 2(b) (*Return Amount*) and replaced with the words "upon a demand made by the Valuation Agent".
- (c) Where (i) the Transferor is Party B (for the purposes of Paragraph 2(a) (*Delivery Amount*)) or (ii) the Transferee is Party B (for the purposes of Paragraph 2(b) (*Return Amount*)), the Valuation Agent will notify Party B what Eligible Credit Support or Equivalent Credit Support (as the case may be) Party B shall transfer to transfer to Party A.

(v) ***Amendment to Paragraph 3(b) (Calculations)***

"(b) ***Calculations***. All calculations of Value for the purposes of Paragraph 2 will be made by the Valuation Agent as of the relevant Valuation Time. The Valuation Agent will notify Party A, Party B and the Custodian of its calculations not later than the Notification Time on the London Business Day following the applicable Valuation Date."

(vi) ***Disapplication of Paragraph 4 (Dispute Resolution)***

Paragraph 4 (*Dispute Resolution*) shall not apply.

(vii) ***Amendments to Paragraph 10 (Definitions)***

- (a) The definition of Transferee shall be deleted and replaced with the following:

""**Transferee**" means, with respect to a Valuation Date, (i) if a negative amount is determined pursuant to Paragraph 11(b)(i)(A)(a), Party B and (ii) if a negative amount is determined pursuant to Paragraph 11(b)(i)(A)(b), Party A."

- (b) Capitalised words and expressions defined in the Trust Instrument shall, except so far as the context otherwise requires, have the same meaning in this Annex. In the event of any inconsistency between the definitions in the Trust Instrument and this Annex, this Annex shall prevail.

(viii) ***Demands and Notices***

All demands, specifications and notices under this Annex will be made pursuant to the "Notices" Section of the Agreement, save that any demand, specification or notice or at such other address as the relevant party may from time to time designate by giving notice (in accordance with the terms of this subparagraph) to the other party and shall be deemed to be effective at the time such notice is actually received unless such notice is received on a day which is not a London Business Day or after 4:00 p.m. (London time) on any London Business Day in which event such notice shall be deemed to be effective on the next succeeding London Business Day.

## SUBSCRIPTION AND SALE

The Dealer agrees that it will (to the best of its knowledge and belief) comply with all applicable securities laws and regulations in force in any jurisdiction in which it purchases, offers, sells or delivers the Securities or possesses or distributes this Supplemental Information Memorandum or the Information Memorandum and will obtain any consent, approval or permission required by it for the purchase, offer, sale or delivery by it of Securities under the laws and regulations in force in any jurisdiction to which it is subject or in which it makes such purchases, offers, sales or deliveries and the Issuer shall not have any responsibility therefor.

Neither the Issuer nor the Dealer represents that Securities may at any time lawfully be sold in compliance with any applicable registration or other requirements in any jurisdiction, or pursuant to any exemption available thereunder, or assumes any responsibility for facilitating such sale.

In particular, the selling restrictions in the following jurisdictions, as set out in the Information Memorandum and described here, apply:

United States (Non U.S. Series); and European Economic Area (including the United Kingdom and Ireland).

In addition, the following selling restriction(s) shall also apply to the Securities:

### **Singapore**

This Supplemental Information Memorandum has not been and will not be registered as a prospectus with the Monetary Authority of Singapore and the Securities will be offered pursuant to exemptions under the Securities and Futures Act, Chapter 289 of Singapore (SFA). Accordingly, the Securities shall not be offered or sold, or made the subject of an invitation for subscription or purchase, nor may this Supplemental Information Memorandum or any other document or material in connection with the offer or sale, or invitation for subscription or purchase of the Securities be circulated or distributed, to any person in Singapore, whether directly or indirectly, other than (i) to an institutional investor pursuant to Section 274 of the SFA, (ii) to a relevant person under Section 275(1) of the SFA, or to any person pursuant to 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the Securities are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

- (a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or
- (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

such Securities shall not be transferable for six months after that corporation or that trust has acquired the Securities under Section 275 of the SFA except:

- (1) to an institutional investor, or to a relevant person defined in Section 275(2) of the SFA, (in the case of a corporation) where the transfer arises from an offer referred to in Section 276(3)(i)(B) of the SFA or (in the case of a trust) where the transfer arises from an offer referred to in Section 276(4)(i)(B) of the SFA;
- (2) where no consideration is or will be given for the transfer;
- (3) where the transfer is by operation of law; or

(4) pursuant to Section 276(7) of the SFA.

## **USE OF PROCEEDS**

The net proceeds of the issue of the Securities, which amount to EUR 17,500,000, will be used by the Issuer to purchase the Initial Asset Swap Charged Assets from the Vendor (see "*Business of the Asset Swap Counterparty and the Vendor*").

### **Method of Payment**

On the Issue Date, delivery of beneficial interests in the Temporary Bearer Global Security will be made in book-entry form through the facilities of Euroclear or Clearstream, Luxembourg, in each case against payment therefor in immediately available funds.



## DESCRIPTION OF THE INITIAL ASSET SWAP CHARGED ASSETS AND THE ISSUERS OF THE INITIAL ASSET SWAP CHARGED ASSETS

*The information in the following sections concerning the Initial Asset Swap Charged Assets and the Initial Underlying Obligors has been accurately reproduced from information published by the Initial Underlying Obligors and from information published by Bloomberg. So far as the Issuer is aware and is able to ascertain from information published by the Initial Underlying Obligors and from information published by Bloomberg, no facts have been omitted which would render the information reproduced herein inaccurate or misleading.*

**The Initial Asset Swap Charged Assets comprise the following:**

### **1. Hellenic Republic of Greece**

|                                    |                              |
|------------------------------------|------------------------------|
| Issuer:                            | Hellenic Republic of Greece. |
| Issuer's address:                  | Not applicable.              |
| Issuer's country of incorporation: | Not applicable.              |
| Issuer's business:                 | Not applicable.              |
| Maturity Date:                     | 11 August 2016.              |
| Governing law:                     | English.                     |
| ID Codes:                          | XS0071095045.                |
| Listing:                           | Unlisted.                    |

The Hellenic Republic of Greece has debt listed on the Luxembourg Stock Exchange.

### **2. Hanson Limited**

|                                    |  |
|------------------------------------|--|
| Issuer:                            | Hanson Limited.  |
| Issuer's address:                  | 1 Grosvenor Place, London SW1X 7JH.  |
| Issuer's country of incorporation: | England and Wales.   |
| Issuer's business:                 | Hanson UK is the leading supplier of heavy building materials to the UK construction industry. |
| Maturity Date:                     | 15 August 2016.  |
| Governing law:                     | State of New York.   |
| ID Codes:                          | US411349AA15.  |
| Listing:                           | New York Stock Exchange.   |

This information in relation to the Initial Asset Swap Charged Assets and the Initial Underlying Obligors has been extracted from public sources and has not been independently verified by the Issuer or Merrill Lynch International.

## DESCRIPTION OF THE COUNTERPARTIES, THE VENDOR AND COMMODITY SWAP GUARANTOR

### 1. BUSINESS OF THE COMMODITY SWAP GUARANTOR

The Commodity Swap Guarantor was incorporated under the laws of the State of Delaware, U.S.A. in 1973. Pursuant to an Agreement and Plan of Merger dated as of September 15, 2008, between Bank of America Corporation (**Bank of America**) and the Commodity Swap Guarantor (as amended by Amendment No. 1 dated as of October 21, 2008, the **Merger Agreement**), on January 1, 2009, the Commodity Swap Guarantor merged with and into a wholly-owned subsidiary of Bank of America, with the Commodity Swap Guarantor continuing as the surviving corporation and a subsidiary of Bank of America.

The Commodity Swap Guarantor is a holding company that, through its subsidiaries and affiliates, is one of the world's leading capital markets, advisory and wealth management companies and is a leading global trader and underwriter of securities and derivatives across a broad range of asset classes, and serves as a strategic advisor to corporations, governments, institutions and individuals worldwide. Its parent, Bank of America, is a bank holding company and a financial holding company incorporated in the State of Delaware, U.S.A. in 1998. Bank of America provides a diversified range of banking, investing, asset management and other financial services and products to consumers across the United States and in more than 40 countries. Bank of America provides these services and products through six business segments: (1) Deposits, (2) Global Card Services, (3) Home Loans and Insurance, (4) Global Banking, (5) Global Markets, and (6) Global Wealth and Investment Management.

Moody's Investors Service, Inc. (**Moody's**) currently rates the Commodity Swap Guarantor's long-term debt as "A2" and short-term debt as "P-1". Standard and Poor's Ratings Services (**Standard and Poor's**) currently rates the Commodity Swap Guarantor's long-term debt as "A" and short-term debt as "A-1". Fitch, Inc. (**Fitch**) currently rates the Commodity Swap Guarantor's long-term debt as "A+" and short-term debt as "F1+". Further information with respect to such ratings may be obtained from Moody's, Standard & Poor's and Fitch, respectively. No assurances can be given that the current ratings of the Commodity Swap Guarantor's debt will be maintained.

The principal executive office of the Commodity Swap Guarantor is located at 100 North Tryon Street, Charlotte NC 28255, United States of America. The Commodity Swap Guarantor's registered office in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, United States of America.

### 2. BUSINESS OF THE ASSET SWAP COUNTERPARTY AND THE VENDOR

Bank of America, National Association is the Asset Swap Counterparty (and also the Vendor). The Asset Swap Counterparty is a national banking association organized under the laws of the United States, with its principal executive offices located in Charlotte, North Carolina. The Asset Swap Counterparty is a wholly-owned indirect subsidiary of Bank of America and is engaged in a general consumer banking, commercial banking and trust business, offering a wide range of commercial, corporate, international, financial market, retail and fiduciary banking services. As of June 30, 2009, the Asset Swap Counterparty had consolidated assets of \$1.45 trillion, consolidated deposits of \$1 trillion and stockholder's equity of \$150 billion based on regulatory accounting principles.

Bank of America is a bank holding company and a financial holding company, with its principal executive offices located in Charlotte, North Carolina. Additional information regarding Bank of America is set forth in its Annual Report on Form 10-K for the fiscal year ended December 31, 2008, together with its subsequent periodic and current reports filed with the Securities and Exchange Commission (the **SEC**).

Filings can be inspected and copied at the public reference facilities maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549, United States, at prescribed rates. In addition, the SEC maintains a website at <http://www.sec.gov>, which contains reports, proxy statements and other information regarding registrants that file such information electronically with the SEC.

The information concerning Bank of America and the Asset Swap Counterparty is furnished solely to provide limited introductory information and does not purport to be comprehensive. Such information is qualified in its entirety by the detailed information appearing in the documents and financial statements referenced herein.

Moody's currently rates the Asset Swap Counterparty's long-term debt as "Aa3" and short-term debt as "P-1". The outlook is stable. Standard & Poor's currently rates the Asset Swap Counterparty's long-term debt as "A+" and its short-term debt as "A-1". The outlook is stable. Fitch currently rates long-term debt of the Asset Swap Counterparty as "A+" and short-term debt as "F1+". The outlook is stable. Further information with respect to such ratings may be obtained from Moody's, Standard & Poor's and Fitch, respectively. No assurances can be given that the current ratings of the Asset Swap Counterparty's instruments will be maintained.

The Asset Swap Counterparty will provide copies of the most recent Bank of America Corporation Annual Report on Form 10-K, any subsequent reports on Form 10-Q, and any required reports on Form 8-K (in each case as filed with the SEC pursuant to the Exchange Act), and the publicly available portions of the most recent quarterly Call Report of the Asset Swap Counterparty delivered to the Comptroller of the Currency, without charge, to each person to whom this document is delivered, on the written request of such person. Written requests should be directed to:

Bank of America Corporate Communications  
100 North Tryon Street, 18th Floor  
Charlotte, North Carolina 28255  
Attention: Corporate Communication

The delivery hereof shall not create any implication that there has been no change in the affairs of Bank of America or the Asset Swap Counterparty since the date hereof, or that the information contained or referred to in this section is correct as of any time subsequent to its date.

### **3. BUSINESS OF THE COMMODITY SWAP COUNTERPARTY**

Merrill Lynch International is the Commodity Swap Counterparty. The Commodity Swap Counterparty is a company incorporated in England and Wales and is authorised and regulated by the Financial Services Authority under the Financial Services Market Act 2000. The Commodity Swap Counterparty is a company unlimited with shares. The Commodity Swap Counterparty was established on the 2nd November 1988 under the UK Companies Act 1985 as Mobilemanor Limited changing its name to Merrill Lynch International Limited on the 8th March 1989 and re-registering as an unlimited company on the 29th March 1996. The registered address of the Commodity Swap Counterparty is 2 King Edward Street, London, EC1A 1HQ.

The Commodity Swap Counterparty's principal activities are to provide a wide range of financial services, to act as a broker and dealer in financial instruments and to provide corporate finance services.

## GENERAL INFORMATION

1. There are no governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the Issuer is aware) in the 12 months preceding the date of this document which may have or have had in such period a significant effect on the financial position or profitability of the Issuer.
2. No material fees are payable by the Issuer in respect of which the Issuer does not have the right of reimbursement. The estimated total expenses related to the admission to trading on the Irish Stock Exchange are approximately EUR 3,500.
3. The auditors of the Issuer are Deloitte and Touche, Earlsfort Terrace, Dublin 2, Ireland who are chartered accountants qualified to practise in Ireland and members of the Institute of Chartered Accountants in Ireland, and who have audited the Issuer's accounts, without qualification, in accordance with generally accepted auditing standards in Ireland for each of the two financial years ended on 31 December 2008 and 31 December 2009. The auditors of the Issuer have no material interest in the Issuer.
4. The Issuer does not intend to provide any post-issuance information in relation to the Securities.
5. For the life of the Securities copies of the published annual audited financial statements of the Issuer for the periods ended 31st December, 2008 and 31st December, 2009, in each case together with the audit reports prepared in connection therewith, will be available in physical form during normal business hours on any weekday (Saturdays, Sundays and public holidays excepted) at the registered office of the Issuer and from the specified office of the Principal Paying Agent in respect of the Securities.
6. Save as disclosed in this prospectus there has been no significant change in the financial or trading position of the Issuer since 31st December, 2009 and there has been no material adverse change in the financial position or prospects of the Issuer since 31st December, 2009.
7. Arthur Cox Listing Services Limited is acting solely in its capacity as listing agent for the Issuer in connection with the Securities and is not itself seeking admission of the Securities to the official list of the Irish Stock Exchange or to trading on the regulated market of the Irish Stock Exchange for the purposes of the Prospectus Directive.
8. Any websites referred to herein do not form part of this prospectus.
9. Moody's, Fitch and Standard and Poor's are established in the European Union and are registered under Regulation (EC) No. 1060/2009.
10. The issue of the Securities was authorised by a resolution of the Board of Directors of the Issuer passed on 22 March 2011.

**REGISTERED OFFICE OF THE ISSUER**

**Xenon Capital Public Limited Company**  
5 Harbourmaster Place  
International Financial Services Centre  
Dublin 1  
Ireland

**TRUSTEE**

**HSBC Corporate Trustee Company (UK) Limited**  
Level 24  
8 Canada Square  
London  
E14 5HQ

**DEALER AND COMMODITY SWAP  
COUNTERPARTY**

**Merrill Lynch International**  
2 King Edward Street  
London EC1A 1HQ  
England

**ASSET SWAP COUNTERPARTY, VENDOR,  
AGENT BANK, SELLING AGENT AND  
CALCULATION AGENT**

**Bank of America, National Association**  
101 S. Tryon Street  
Charlotte, NC 28255  
USA

**PRINCIPAL PAYING AGENT AND CUSTODIAN**

**HSBC Bank plc**  
8 Canada Square  
London E14 5HQ  
England

**LEGAL ADVISERS**

To the Issuer  
as to Irish law:  
**Arthur Cox**  
Earlsfort Centre  
Earlsfort Terrace  
Dublin 2, Ireland

To the Dealer and the Trustee  
as to English law:  
**Allen & Overy LLP**  
One Bishops Square  
London  
E1 6AD

**IRISH LISTING AGENT**

**Arthur Cox Listing Services Limited**  
Earlsfort Centre  
Earlsfort Terrace  
Dublin 2, Ireland