

## VISTA ASSET FUNDING (IRELAND) LIMITED

(a private company with limited liability incorporated under the Companies Acts 1963 to 2009 of Ireland with number 507038)

### EUR 100,000,000 Asset Backed Securities due 2018

The EUR 100,000,000 Asset-Backed Securities due 2018 (the “**Securities**”) have been issued by Vista Asset Funding (Ireland) Limited (the “**Issuer**”) on the Closing Date (as defined below). Periodic Return Payments (as defined below) (if any) on the Securities will be made annually in arrears on 1 September in each year, with the first payment (if any) being on 1 September 2013. Periodic Return Payments, including redemption amounts, at maturity or otherwise with respect to the Securities may or may not be made by the Issuer and will depend upon the receipt by the Issuer of a return on investments that it makes.

Payments on the Securities will be made without deduction for or on account of taxes unless such deduction is required by law. See “Terms and Conditions of the Securities - Taxation”.

The Securities have been subscribed for by the initial purchasers of the Securities for less than the full Stated Amount (being EUR 100,000,000 in aggregate) thereof. The Issuer may from time to time require that each holder of a Security pay to the Issuer any amount of the difference, if any, between (i) the amount already paid to the Issuer with respect thereto and (ii) the Stated Amount of such Security. The Issuer may at any time and without limitations, other than those specified in this document, reduce the Paid-Up Amount of a Security by repaying all or some of amounts of principal representing the then current Paid-Up Amount. The Issuer may subsequently, upon exercise of a Capital Call in accordance with the Terms and Conditions, increase the Paid-Up Amount of a Security previously repaid up to an amount equal to (but not greater than) the Stated Amount.

The Securities mature on 1 September 2018 but may be redeemed prior thereto at the option of the Issuer.

Application has been made to the Irish Stock Exchange for this document (the “**Listing Particulars**”) to be approved and for the Securities to be admitted to the Official List and to trading on its Global Exchange Market (the “**GEM**”).

The Securities have not been registered under the United States Securities Act of 1933, as amended (the “**Securities Act**”). The Securities will be offered only to accredited investors in reliance on the exemption from registration under Section 4(2) of the Securities Act. The Issuer will not be registered under the Investment Company Act of 1940. Interests in the Securities will be subject to certain restrictions on transfer (see “Subscription”).

***For a description of certain matters that the prospective investors should consider, see “Risk Factors”.***

This Listing Particulars is dated 14 May 2012.

The Issuer accepts responsibility for the information contained in this Listing Particulars (the “**Listing Particulars**”) except for the information contained in the sections entitled “The Portfolio Manager”, and “The Portfolio” (together, the “**Portfolio Manager Information**”). To the best of the knowledge and belief of the Issuer (having taken all reasonable care to ensure that such is the case), such information is in accordance with the facts and does not omit anything likely to affect the import of such information. The Issuer accepts responsibility accordingly. Mount Kellett Capital Management LP (the “**Portfolio Manager**”) accepts responsibility for the Portfolio Manager Information. To the best of the knowledge and belief of the Portfolio Manager (having taken all reasonable care to ensure that such is the case), such information is in accordance with the facts and does not omit anything likely to affect the import of such information. The Portfolio Manager accepts responsibility accordingly.

The Securities may not be offered or sold directly or indirectly, and neither this Listing Particulars nor any offering circular, prospectus, form of application, advertisement, other offering material or other information relating to the Issuer or the Securities may be issued, distributed or published in any country or jurisdiction (including the Republic of Ireland (“**Ireland**”) and the United Kingdom), except in circumstances that will result in compliance with all applicable laws, orders, rules and regulations.

The distribution of this Listing Particulars and the offering of the Securities in certain jurisdictions may be restricted by law. Persons into whose possession this Listing Particulars comes are required by the Issuer to inform themselves about and to observe any such restrictions. For a description of certain restrictions on offers and sales of Securities and distribution of this Listing Particulars and other offering material relating to the Securities, see “Subscription” below.

No person is authorised to give any information or to make any representation not contained in this Listing Particulars and any information or representation not so contained must not be relied upon as having been authorised by or on behalf of the Issuer. The delivery of this Listing Particulars at any time does not imply that the information contained in it is correct as at any time subsequent to its date and neither the Issuer nor the Portfolio Manager undertakes to update the information contained in this document.

Neither this Listing Particulars nor any part hereof constitutes an offer of, or an invitation by, or on behalf of the Issuer to subscribe or purchase any of the Securities and neither this Listing Particulars, nor any part hereof, may be used for or in conjunction with an offer to, or solicitation by, any person in any jurisdiction or in any circumstances in which such offer or solicitation is not authorised or to any person to whom it is unlawful to make such offer or solicitation.

This Listing Particulars may only be communicated or caused to be communicated to persons (a) who are outside the United Kingdom and Ireland; or (b) who have professional experience in matters relating to investments; or (c) who are persons falling within Article 49(2)(a) to (e) of the Financial Services and Market Act 2000 (Financial Promotion) Order 2001 of the United Kingdom; or (d) to whom this Listing Particulars may otherwise be lawfully communicated in accordance with all applicable laws (all such persons together being referred to as “**relevant persons**”). This Listing Particulars must not be acted on or relied on by persons who are not relevant persons. Any investment or investment activity to which this communication relates is available only to relevant persons and will be engaged in only by relevant persons.

In this Listing Particulars, unless otherwise specified or the context otherwise requires, references to “**€**” and “**euro**” are to the lawful currency for the time being of Ireland and references to “**\$**”, and “**USD**” are to the lawful currency for the time being of the United States of America.

This offering is being made in reliance upon an exemption from registration under the Securities Act for an offer and sale of the Securities which does not involve a public offering. In making your purchase, you will be deemed to have made certain acknowledgments, representations and agreements. See “Subscription”.

The Securities described in this offering circular have not been registered with, recommended by or approved by the US Securities and Exchange Commission (the “**SEC**”), any state securities commission in the United States or any other securities commission or regulatory authority, nor has the SEC, any state securities commission in the United States or any such securities commission or authority passed upon

the accuracy or adequacy of this offering circular. Any representation to the contrary is a criminal offence.

The Issuer is not, and will not be, regulated by the Central Bank of Ireland (the “**Central Bank**”) by virtue of the issue of the Securities. Any investment in the Securities does not have the status of a bank deposit and is not subject to the deposit protection scheme operated by the Central Bank.

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## SUMMARY

***The following summary does not purport to be complete and is qualified in its entirety by reference to the detailed information appearing elsewhere in this Listing Particulars and related documents referred to herein. For a discussion of certain risk factors to be considered in connection with an investment in the Securities, see “Risk Factors”.***

***Capitalised terms not otherwise defined herein shall bear the meanings given to them in the Terms and Conditions.***

**The Issuer:**

Vista Asset Funding (Ireland) Limited, a private company with limited liability incorporated under the laws of Ireland, having its registered office at 4<sup>th</sup> Floor, Hanover Building, Windmill Lane, Dublin 2, Ireland and registered under the Companies Acts 1963 to 2009 of Ireland under number 507038, for the purpose of acquiring certain Portfolio Assets, managing the Portfolio (as defined below), issuing the Securities and engaging in certain related transactions as described in the Transaction Documents.

The Issuer will not have any assets other than the Portfolio and the balance standing to the credit of the Accounts and the Issuer Account and its rights under the Portfolio Management Agreement, each Investment Acquisition Agreement, each Hedge Agreement, each Securities Lending Agreement, each Repurchase Agreement and the Trust Deed (together the “**Transaction Documents**”) and certain other incidental rights and assets.

**The Securities:**

Pursuant to the Trust Deed, the Issuer issued EUR 100,000,000 Asset Backed Securities on 10 February 2012 (the “**Closing Date**”) in consideration for the Subscription Amount and deferred payment by way of Capital Call in respect of the Securities.

**Status, Ranking and Priority of the Securities:**

The Securities constitute direct, unsecured, unconditional and subordinated obligations of the Issuer, and will rank *pari passu* and rateably without any preference among themselves for all purposes. The Securities will rank, as to payment in respect of amounts due upon the Securities, junior to all other present and future secured obligations of the Issuer (the “**Senior Secured Obligations**”) and to all other present and future unsecured obligations of the Issuer (the “**Senior Unsecured Obligations**”) and together with the Senior Secured Obligations, the “**Senior Obligations**”). Payment on the Securities will be made only to the extent of the value of the Net Recourse Assets (as defined in Condition 5.1 (*Final Redemption*)).

Prior to the occurrence of an Event of Default (as defined in Condition 10 below), all moneys received by (or on behalf of) the Issuer in respect of the Securities, shall be applied in the following order of priority:

- (1) first, in or towards payment of all fees and other remuneration of and all costs, charges, expenses and Liabilities incurred by the Trustee;

- (2) secondly, in or towards payment pari passu and rateably of all fees and other remuneration of and all costs, charges, expenses and Liabilities incurred by the Agents;
- (3) thirdly, in or towards payment, pari passu and rateably, of (i) any fees, taxes, costs and expenses properly incurred by the Issuer in connection with the carrying on of its business (other than expenses reimbursed to the Issuer under any of the Transaction Documents); including, in particular, the fees and expenses of the directors of the Issuer and any costs relating to any indemnity insurance provided (to the extent permitted by law) to the directors of the Issuer; (ii) any fees, costs and expenses (the "**Litigation Expenses**") properly incurred by the Issuer to defend any claim brought against it in connection with the carrying out of its business provided that the incurring of any such Litigation Expenses has been agreed in advance by the Portfolio Manager in writing; (iii) all registered office fees, legal fees, audit fees, accounting fees and tax amounts payable by the Issuer for the period from the date hereof until the Issuer is dissolved and its name removed from the Register of Companies of Ireland; and (iv) all annual return fees in Ireland from the date hereof until the Issuer is dissolved and its name removed from the Register of Companies of Ireland;
- (4) fourthly, up until 2014 in or towards the acquisition of Portfolio Assets;
- (5) fifthly, in or towards payment pari passu and rateably of all arrears of Periodic Return Payments remaining unpaid in respect of the Securities and all Paid-Up Amounts or due on or in respect of the Securities; and
- (6) sixthly, the balance (if any) in payment to the Issuer.

For the purpose of the above Liabilities means any loss, damage, cost, charge, claim, demand, expense, judgement, action, proceeding, or other liability whatsoever (including, without limitation, in respect of taxes, duties, levies, imposts and charges) and including any value added tax or similar tax charged or chargeable in respect thereof and reasonable legal fees and expenses on a full indemnity basis.

Following the occurrence of an Event of Default (as defined in Condition 10 below), all moneys received by the Trustee in respect of the Securities or amounts payable under the Trust Deed will despite any appropriation of all or part of them by the Issuer (including any moneys which represent Paid-Up Amounts or Periodic Return Payments in respect of Securities which have become void under the Conditions) be held by the Trustee on trust to apply them in the following order of priority:

- (i) first, in or towards payment of all fees and other

remuneration of and all costs, charges, expenses and Liabilities incurred by the Trustee;

- (ii) secondly, in or towards payment *pari passu* and rateably of all of all fees and other remuneration of and all costs, charges, expenses and Liabilities incurred by the Agents;
- (iii) thirdly, in or towards payment, *pari passu* and rateably, of (i) any fees, taxes, costs and expenses properly incurred by the Issuer in connection with the carrying out of its business (other than expenses reimbursed to the Issuer under any of the Transaction Documents) including, in particular, the fees and expenses of the directors of the Issuer and any costs relating to any indemnity insurance provided (to the extent permitted by law) to the directors of the Issuer; (ii) any Litigation Expenses properly incurred by the Issuer to defend any claim brought against it in connection with the carrying out of its business provided that the incurring of any such Litigation Expenses has been agreed in advance by the Portfolio Manager in writing; (iii) all registered office fees, legal fees, audit fees, accounting fees and tax amounts payable by the Issuer for the period from the date hereof until the Issuer is dissolved and its name removed from the Register of Companies of Ireland; and (iv) all annual return fees in Ireland from the date hereof until the Issuer is dissolved and its name removed from the Register of Companies of Ireland;
- (iv) fourthly, in or towards payment *pari passu* and rateably of all arrears of Periodic Return Payments remaining unpaid in respect of the Securities and all Paid-Up Amounts or due on or in respect of the Securities; and
- (v) fifthly, the balance (if any) in payment to the Issuer.

**The Trustee:**

BNY Mellon Corporate Trustee Services Limited (the “**Trustee**”), whose office is at One Canada Square, London E14 5AL, United Kingdom, has been appointed as trustee of the holders of the Securities (the “**Security Holders**”) pursuant to a trust deed dated as of the Closing Date (the “**Trust Deed**”). The Trust Deed is governed by Irish law.

**The Paying Agent:**

The Bank of New York Mellon (the “**Paying Agent**”, acting through its London Branch whose specified office is at One Canada Square, London E14 5AL, United Kingdom, has been appointed as the Paying Agent. It provides paying agency services to the Issuer pursuant to the agency agreement dated as of the Closing Date (the “**Agency Agreement**”). The Agency Agreement is governed by Irish law.

**The Custodian:**

The Bank of New York Mellon (acting through its London Branch) (the “**Custodian**”) whose specified office is at One

Canada Square, London E14 5AL, United Kingdom, has been appointed as the Custodian. It provides custodial services in relation to the Portfolio Assets pursuant to the Agency Agreement.

<b>Registrar</b>	The Bank of New York Mellon (Luxembourg) S.A., acting through its office at Vertigo Building, Polaris, 2-4 rue Eugène Ruppert, L-2453 Luxembourg has been appointed as registrar (in such capacity, the “ <b>Registrar</b> ”, which expression includes any other registrar appointed in respect of the Securities pursuant to the Agency Agreement).
<b>Issuer Account:</b>	The Issuer has opened and will maintain an account (the “ <b>Issuer Account</b> ”) with The Bank of New York Mellon (Ireland) Limited, with its registered office at 4th Floor, Hanover Building, Windmill Lane, Dublin 2 in which will be kept the share capital of the Issuer and any Hold Back Amounts (as defined in Condition 4) received by the Issuer.
<b>The Portfolio Manager:</b>	The Issuer has engaged the services of Mount Kellett Capital Management LP (the “ <b>Portfolio Manager</b> ”) to perform certain purchase, disposal and management functions with respect to the Portfolio in accordance with a Portfolio Management Agreement dated as of the Closing Date between the Issuer and the Portfolio Manager (the “ <b>Portfolio Management Agreement</b> ”). The Portfolio Management Agreement is governed by Irish law.
<b>Use of Proceeds:</b>	The Issuer will apply Deferred Proceeds of the offering of the Securities (after payment of applicable fees and expenses) to the acquisition of Portfolio Assets (or in the discharge of liabilities incurred to finance the acquisition of Portfolio Assets) (as described in “Portfolio – Description of the Portfolio Assets”).
<b>Portfolio Assets:</b>	Those financial or other investments or instruments that the Issuer purchases or originates from time to time (which will always constitute “qualifying assets” as described in s.110 of the Irish Taxes Consolidation Act 1997 (as amended) including, without limitation, investments in the debt and equity of private and public companies, bank loans and bonds, distressed and stressed investments, including control positions, single credits, portfolios of corporate loans, consumer receivables and mortgage loans and real estate and real estate-related securities.
<b>Periodic Return Payments:</b>	The return on a Security in respect of any Accrual Period (the “ <b>Periodic Return</b> ”) will be the relevant proportion (being the proportion that the Paid-Up Amount of such Security bears to the aggregate Paid-Up Amount of all outstanding Securities (the “ <b>Relevant Proportion</b> ”)) of an amount equal to the greater of (a) all income and gains (realised or unrealised) recognised in the Income Statement of the Issuer (as prepared under IFRS) in respect of the assets and liabilities and related arrangements of the Issuer, less (i) any losses (realised or unrealised) recognised in the Income Statement of the Issuer, for the



Accrual Period, (ii) the sum of all operating expenses and costs (other than the accrual of Periodic Return) of the Issuer accrued and recognised in the Income Statement in that Accrual Period, (iii) any cumulative retained losses brought forward from the prior Accrual Period and (iv) the Hold Back Amount for that Accrual Period; or (b) Zero.

Such Periodic Return Payment will be regarded as accruing throughout the Accrual Period. The Payment of the Periodic Return (a **"Periodic Return Payment"**) (if any) on the Securities will be due and payable annually in arrears on 1 September in each year, with the first payment (if any) being on 1 September 2013. The payment of the Periodic Return may be made prior to 1 September in each year provided that the Issuer notifies recipients of such payment no less than 14 days prior to payment date.

The Issuer may, at its sole discretion, make the Periodic Return Payment due by way of (a) cash or (b) Payment In Kind. Payment In Kind includes reinvestment of whole or part of the Periodic Return Payment due on the Security by way of additional Paid-Up Amount in respect of such Security. There shall be no obligation with respect to the Periodic Return Payment in any Accrual Period in which there is no income recognised in the Income Statement of the Issuer.

**Hold Back Amount** shall be, with respect to any Accrual Period, an amount equal to the greater of (a) 2 per cent of the net profit as recognised under the Income Statement of the Issuer before the accrual of the Periodic Return, or (b) Zero.

**Currency of Payment:**

Sums payable by the Issuer under or in connection with these presents and the Securities including, damages may be paid either (i) in euro (the **"Base Currency"**), or (ii) in such other currencies (the **"Alternative Currencies"**) as determined by the Issuer (or the Portfolio Manager on behalf of the Issuer). In circumstances where the Issuer (or the Portfolio Manager on behalf of the Issuer) wishes to make payments in an Alternative Currency, then the Portfolio Manager will calculate the amount in the Alternative Currency equal to the euro amount due and payable, using the Account Bank's spot rate (the **"Spot Rate"**) of exchange for the purchase of the relevant Alternative Currency with the Base Currency in the New York foreign exchange market at or about 11.00 a.m on the Business Day immediately preceding the Business Day upon which the relevant payment is due and payable.

**Final Maturity:**

The Securities will mature at their Paid-Up Amount on 2018 or, if such day is not a Business Day, the immediately preceding Business Day (the **"Maturity Date"**) provided, however, that if the net assets of the Issuer on such date is less than the aggregate Paid-Up Amounts of all the Securities, the Paid-Up Amount of each Security shall be reduced to an amount equal to the Relevant Proportion of such amount of the net assets of the Issuer and any claims

of the Security Holders in respect of the Securities shall be extinguished.

<b>Optional Redemption:</b>	The Issuer may redeem such Securities as it may elect in its absolute discretion from time to time at the Paid-Up Amount of such Securities together with any Periodic Return Payment due (determined as if reference in Condition 4 to “Accrual Period” is reference to the period beginning on the day following the last day of the preceding Accrual Period or, with respect to the first Accrual Period, the date of incorporation of the Issuer and ending on the day falling 30 days prior to the date fixed for redemption of such Security).
<b>Accounts:</b>	The Deferred Proceeds (and any cash proceeds relating to, or return on, the Portfolio) will be credited to one or more interest bearing accounts in the name of the Issuer (the “ <b>Accounts</b> ”) opened and maintained with The Bank of New York Mellon (the “ <b>Account Bank</b> ”). Withdrawals from the Accounts will only be made in accordance with the terms of the Agency Agreement. The Portfolio Manager, on behalf of the Issuer, may from time to time, direct the Account Bank, to release monies from the Accounts for the purchase of Portfolio Assets (see “ <i>The Portfolio – Mechanics of Purchase of Portfolio Assets –Accounts</i> ”) and to meet the costs and expenses of the Issuer from time to time.
<b>Securities Lending and Repurchase Agreements:</b>	Subject to certain conditions, the Issuer will be permitted to lend or pledge all or some of the Portfolio Assets under securities lending agreements or sell Portfolio Assets under agreements to repurchase such assets (each a “ <b>Securities Lending Agreement</b> ” or “ <b>Repurchase Agreement</b> ”). The Issuer may also pledge assets to other sources of finance from time to time. See “The Portfolio – Mechanics of Purchase of Portfolio Assets”.
<b>Stated Amount:</b>	The Stated Amount of the Securities will be the amount in euro stated on the face of the Certificates and recorded in the Register (each as defined in Condition 1 of the Securities).
<b>Hedge Transactions:</b>	The Issuer may enter into hedging agreements (“ <b>Hedge Agreements</b> ”) from time to time with one or more financial institutions with respect to the Portfolio Assets.
<b>Withholding Tax:</b>	Payments in respect of the Securities will be made free of withholding tax unless otherwise required by law. The Issuer will be under no obligation to gross-up such payments in the event of any such withholding tax being imposed.
<b>The Offering:</b>	The Securities have been and will only be offered to persons who are accredited investors in reliance on the exemption from registration under Section 4(2) of the Securities Act.
<b>Form of the Securities:</b>	The Securities have been issued in registered form.

<b>Governing Law:</b>	The Securities are governed by Irish law.
<b>Listing:</b>	Application has been made to the Irish Stock Exchange for the Securities to be admitted to the Official List and to trading on its Global Exchange Market. See “General Information”.
<b>Irish Listing Agent:</b>	A&L Listing Limited.
<b>Tax Status:</b>	See “Certain Tax Considerations”.
<b>Transaction Documents:</b>	means the Trust Deed, the Agency Agreement, the Vista Fund I Subscription Agreement, the Vista Fund II Subscription Agreement, the Portfolio Management Agreement, any Hedge Agreements, any Securities Lending Agreements, any Repurchase Agreements, and the Capital Call Notice.

## RISK FACTORS

***Prior to making an investment decision, prospective investors should carefully consider, in addition to the matters set forth elsewhere in this Listing Particulars, the following factors.***

### **General**

It is intended that the Issuer will invest in loans, bonds, asset-backed securities and other financial assets with certain risk characteristics as described below and subject to the investment policies, restrictions and guidelines described in "The Portfolio" below. There can be no assurance that the Issuer's investments will be successful, that the holders of Securities will receive the full amounts payable by the Issuer under the Securities or that they will receive any return on their investment in the Securities. Prospective investors are therefore advised to review this entire Listing Particulars carefully and should consider, among other things, the factors set out below before deciding whether to invest in the Securities.

Prospective purchasers of the Securities should be particularly knowledgeable in investment matters and should ensure that they understand the nature of such Securities and the extent of their exposure to risk, that they have sufficient knowledge, experience and access to professional advisers to make their own legal, tax, accounting and financial evaluation of the merits and risks of investment in such Securities and that they consider the suitability of such Securities as an investment in the light of their own circumstances and financial condition.

### **Security**

The Issuer may from time to time pledge certain of its assets and rights (together the "Collateral") in favour of third party financing sources (each a "Third Party Lender" and collectively, the "Third Party Lenders") as security for any monies lent to the Issuer by such Third Party Lenders.

The Collateral will be subject to a security interest, which will rank before the unsecured claims of the Security Holders. Prior to its granting any such pledge of Collateral in favour of Third Party Lenders, the Issuer will notify the Security Holders of its intention to grant such a pledge. "

To the extent that the Collateral is insufficient to cover the Issuer's liabilities and obligations to one or more third party financing source(s), such third party financing source(s) will have an unsecured claim against the remaining assets of the Issuer, ranking *pari passu* with all other Senior Unsecured Obligations and senior to the claims of the Security Holders.

### **Ability of the Issuer to Meet its Obligations under the Securities**

None of the Trustee, the Portfolio Manager, or any of their affiliates or any other person or entity (other than the Issuer) will be obligated to make payments on the Securities. Consequently, the Security Holders must rely solely on the Portfolio for the payment of the Periodic Return Payments and the other payments on the Maturity Date. There can be no assurance that the distributions on the Portfolio will be sufficient to make payments on the Securities. Where amounts received in respect of the Portfolio are insufficient to make payments on the Securities, no other assets will be available for payment of the deficiency and, following realisation of the Issuer's assets and the application of the proceeds thereof, the obligations of the Issuer to pay such shortfall shall be extinguished. If, in respect of any accrual period, the amount of the periodic return is zero or any negative number the Issuer will not have any obligation to make a periodic return payment in respect of that accrual period.

### **Dependence on Portfolio Manager**

The success of the Portfolio depends upon the ability of the Portfolio Manager (acting as such) to develop and implement investment strategies that achieve the Issuer's investment objectives. If the Portfolio Manager were to become unable to participate in the management of the Portfolio, the consequences to the Portfolio could be material and adverse.

The success of the Issuer depends on the ability of Mark McGoldrick and the other senior members of the Portfolio Manager's investment team to successfully implement the Issuer's investment objective. In particular, if the Issuer were to lose the services of Mark McGoldrick, the consequences to the Issuer would be material and adverse.

### **Future Investments**

The Portfolio Manager has not identified any of the investments that will be made by the Issuer. As a result, there are risks and uncertainties with respect to the availability and selection of investments. Investors will be relying on the ability of the Portfolio Manager to find and choose suitable future investments. The business of identifying and structuring investments is highly competitive and involves a high degree of uncertainty. No assurance can be given that the Issuer will be successful in obtaining suitable investments.

### **Liquidity of Portfolio Assets**

The Issuer may invest in securities, loans or other types of "qualifying assets" (within the meaning of s.110 of the Irish Taxes Consolidation Act 1997) for which no (or only a limited) liquid market exists or that are subject to legal or other restrictions on transfer. The market prices, if any, for such assets may be volatile, and may fluctuate due to a variety of factors that are inherently difficult to predict, including, but not limited to, changes in interest rates, prevailing credit spreads, general economic conditions, financial market conditions, domestic or international economic or political events, developments or trends in any particular industry, and the financing condition of the obligors on the Portfolio Assets. The Issuer may not be able to sell assets when it desires to do so or to realise what it perceives to be their fair value in the event of a sale. The sale of illiquid assets often requires more time and results in higher brokerage charges or dealer discounts and other selling expenses than does the sale of securities eligible for trading on national securities exchanges or in the over-the-counter markets. Restricted securities may sell at a price lower than similar securities that are not subject to restrictions on resale.

### **Potential Conflicts of Interest**

**General.** The Portfolio Manager intends to act in good faith in a manner consistent with its duties to clients under applicable law. However, the Portfolio Manager is subject to various conflicts of interest arising from its relationship with its Portfolio Manager and affiliates ("**Affiliates**"). Affiliates engage in a broad spectrum of activities, including investment advisory activities that are independent from, and may from time to time conflict or compete with, the Issuer's investment activities. However, there can be no assurance that other conflicts of interest with the potential for adverse effects on the Issuer will not arise.

### **Allocation of Investment Opportunities**

The Portfolio Manager and its affiliates, provide portfolio management services to Mount Kellett Capital Partners II LP, a Delaware Limited partnership and Mount Kellett Capital Partners (Cayman) II, L.P., a Cayman Islands limited partnership, Mount Kellett Capital Partners LP, a Delaware limited partnership, Mount Kellett Capital Partners (Cayman) LP, a Cayman Island limited partnership and Lantau Overseas Master Fund II, L.P., a Cayman limited partnership (the "**MKCP Funds**") and certain of their respective subsidiaries, including Mount Kellett Capital Partners (Ireland) Limited, Mount Kellett Capital Partners (Ireland) II Limited and Lantau (Ireland) I Limited (together with the MKCP Funds, the "**Funds**"), and expect that they will in the future manage additional other accounts (including sector or asset

class specific private investment funds (e.g. real estate funds, loan origination funds, Asian sector funds, etc.) pooled investment vehicles organized as hedge funds and geographic specific private investment funds). The Portfolio Manager will allocate investment opportunities among the Issuer, the Funds and such other accounts on an equitable basis in its good faith discretion, based on the applicable investment guidelines of the Issuer, the Funds and such other accounts, available capital, anticipated duration of the investment, likelihood of current income, portfolio diversification requirements, liquidity constraints and other factors that the Portfolio Manager deems appropriate. As investment advisor to the Issuer and other investment accounts and pooled investment funds, the Portfolio Manager owes a fiduciary duty to all other accounts and in instances where the investment objectives of such vehicles overlap, the Portfolio Manager may have a conflict in allocating investment opportunities among all such vehicles or accounts.

### **Lack of Operating History**

The Issuer has not commenced operations and, accordingly, has no operating history upon which Security Holders may evaluate its performance.

### **Third-Party Involvement**

The Issuer may co-invest with third parties through partnerships, joint ventures or other entities. Such investments involve risks not present in investments where a third-party is not involved, including the possibility that a third-party coventurer or partner may at any time have economic or business interests or goals which are inconsistent with those of the Issuer, or may be in a position to take action contrary to the investment objective of the Issuer. In addition, the Issuer may in certain circumstances be liable for actions of their third-party coventurers or partners.

### **General Economic and Capital Market Conditions**

General economic and capital market conditions may affect the activities of the Issuer. Interest rates, the price of securities and participation by other investors in the financial markets may also affect the value of securities purchased by the Issuer. Potential Investors should realise that distributions may not be made by the Issuer due to general economic conditions, illiquidity of portfolio investments, constraints imposed by financing arrangements, contractual prohibitions or other reasons mentioned below. Companies in which the Issuer may invest may face intense competition, changing business and economic conditions and other developments that may adversely affect their performance. Business risks may be more significant in issuers that are embarking on a build-up or operating a turnaround strategy. General fluctuations in the market prices of securities, including public securities market prices, may adversely affect the value of investments held by the Issuer and/or the ability of the Issuer to dispose of investments at attractive valuations. The Issuer may be unsuccessful in structuring its investments to minimise any detrimental impact that a recession may have on its investments and as a result the Issuer may suffer significant losses.

Conditions in the credit markets may have a significant impact on the business of the Issuer. Among other things, the level of investment opportunities may decline from current expectations. As a result, fewer investment opportunities may be available to the Issuer, although if credit markets remain constrained, the Issuer may have the opportunity to take larger positions in potential transactions. One possible consequence is that the Fund may take a larger than anticipated period to invest capital, as a result of which, at least for some period of time, the Issuer may be relatively concentrated in a limited number of investments. Consequently, during this period, the returns realised by the holders of Securities may be substantially adversely affected by the unfavourable performance of a small number of these investments. In addition, a slowdown in the global economy or in specific regional economies and increases in the prices of oil and gas, raw materials, and agricultural

commodities may affect inflation rates and currency exchange rates, which may in turn have a negative impact on the Issuer's investments.

Furthermore, due to current market conditions, the Issuer may be unable to secure leverage on terms as favourable as more established borrowers in the market, or to obtain any leverage on commercially feasible terms. To the extent the Issuer is able to secure financing for its investments, increases in interest rates or in the risk spread demanded by financing sources would make the partial financing of investments with indebtedness more expensive and could limit the Issuer's ability to structure and consummate its investments.

### **Risks Associated with the Issuer's Investment Strategies**

The success of the Issuer's investment activities depends to a significant degree on the Portfolio Manager's ability to identify and exploit inefficiencies in the markets for a wide range of opportunistic investments, including without limitation publicly traded and privately held equity securities, corporate and government bonds, mortgages and corporate loan obligations including mezzanine loans and other investments in subordinate levels of the capital structure, other stressed, distressed and out of favour credits including commercial and corporate loans, and other assets included in the Issuer's investment programme. Identification and exploitation of these opportunities involve uncertainty. No assurance can be given that the Portfolio Manager will be able to locate investment opportunities or to correctly exploit inefficiencies in the markets. A reduction in inefficiencies that provide opportunities in, for example, capital structure arbitrage will reduce the scope for the Issuer's investment strategies. In the event that the perceived mispricings underlying the Issuer's positions were to fail to converge toward, or were to diverge further from, relationships expected by the Portfolio Manager, the Issuer may incur a substantial loss.

Depending upon the investment strategies employed and market conditions, the Issuer may be adversely affected by unforeseen events involving such matters as political crises, changes in currency exchange rates or interest rates, forced redemptions of securities or acquisition proposals, regulatory intervention or general market conditions creating illiquidity or pricing anomalies or value impairment.

### **Diversification**

The Portfolio Manager may invest a relatively substantial portion of the Portfolio capital in any one investment. An unfavourable performance by one or more of an Issuer's relatively large investments could have a substantial adverse impact on the aggregate returns of the Portfolio.

### **Global Investments**

The Issuer may invest a substantial portion of its net assets in the debt, loans or other securities of issuers located in countries which are not members of the Organisation of Economic Cooperation and Development (the "OECD"). In addition to business uncertainties, such investments may be affected by political, social and economic uncertainty affecting a country or region. Many financial markets are not as developed or as efficient as those in the OECD countries, and as a result, liquidity may be reduced and price volatility may be higher. The legal and regulatory environment may also be different, particularly as to bankruptcy and reorganisation. Financial accounting standards and practices may differ, and there may be less publicly available information in respect of such companies.

The Issuer may be subject to additional risks which include possible adverse political and economic developments, possible seizure or nationalisation of deposits and possible adoption of governmental restrictions which might adversely affect payments to investors located outside the country of the Issuer, whether from currency blockage or otherwise. Furthermore, the acquisition and sale of certain investments may be subject to brokerage taxes and duties levied by government, which has the effect of increasing the cost of such

investment and reducing the realised gain or increasing the realised loss on such investments at the time of sale. Income received by the issuer from sources within some countries may be reduced by withholding and other taxes imposed by such countries. Any such taxes paid by the Issuer will reduce its net income or return from such investments. While the Portfolio Manager will take these factors into consideration in making investment decisions for the Issuer, no assurance can be given that the Issuer will be able to fully avoid these risks.

### **Investments in Undervalued Assets**

One of the primary objectives of the Issuer is to invest in undervalued assets. The identification of investment opportunities in undervalued assets is a difficult task that often requires complex analysis of potential investments and sophisticated evaluation of micro and macro level economic factors. There is no assurance that such opportunities will be successfully recognised or acquired. While investments in undervalued assets offer the opportunity for above-average capital appreciation, these investments involve a high degree of financial risk and can result in substantial losses. Returns generated from the Issuer's investments may not adequately compensate investors for the business and financial risks assumed.

The Issuer may invest a portion of its assets in distressed assets and portfolios of distressed assets (including debt obligations of companies in significant financial or business difficulties). Although such investments may result in significant returns to the Issuer, they involve a substantial degree of risk. Any one or all of the issuers of such obligations may be unsuccessful or not show any return for a considerable period of time. An economic downturn or a period of rising interest rates, for example, could cause a decline in the prices of such obligations. The level of analytical sophistication, both financial and legal, necessary for successful investment in distressed assets is unusually high.

There is no assurance that the Portfolio Manager will correctly evaluate the value of the collateral (if any) in the loans and securities purchased by the Issuer or the prospects for a successful reorganisation, turnaround, restructuring or similar action. In any reorganisation or liquidation proceeding relating to a company in which the Issuer invests, the Issuer may lose its entire investment, may be required to accept cash or securities with a value less than that Issuer's original investment and/or may be required to accept payment over an extended period of time. Under such circumstances, the returns generated from that Issuer's investments may not compensate the holders of the Securities adequately for the risks assumed.

### **Contingent Liabilities**

The Issuer may from time to time incur contingent liabilities in connection with an investment. For example, the Issuer may purchase from a lender a revolving credit facility that has not yet been fully drawn. If the relevant borrower subsequently draws down on the facility, the Issuer would be obligated to fund the amounts due. The Issuer may incur numerous other types of contingent liability. There can be no assurance that the Issuer will adequately reserve for its contingent liabilities and that such liabilities will not have an adverse effect on the Issuer.

### **Use of Leverage**

The Issuer may employ direct or indirect leverage in a variety of forms through borrowings, derivatives and other financial instruments as part of its investment programmes. The leverage incurred by the Issuer may be senior in priority to the Securities. The greater the total leverage of the Issuer relative to its equity capital base, the greater the risk of loss and possibility of gain due to market fluctuations in the values of its investments. Leverage can result in the total loss of capital. The Issuer is not subject to a contractual limitation on the leverage it incurs, including leverage that is senior in priority to the Securities.



### **Interest Rate Risks**

The Issuer will have exposure to interest rate risks, meaning that changes in prevailing interest rates could negatively affect the value of the Portfolio. Over any defined period of time, the Issuer's interest-bearing assets may be more sensitive to changes in market interest rates than the Issuer's interest-earning liabilities, or vice versa. Factors that may affect market interest rates include, without limitation, inflation, slow or stagnant economic growth or recession, unemployment, money supply and the monetary policies of the Federal Reserve Board or the European Central Bank, international disorders and instability in financial markets. The Issuer expects that it will periodically experience imbalances in the interest rate sensitivities of their assets and liabilities and the relationships of various interest rates to each other. In a changing interest rate environment, the Issuer may not be able to manage this risk effectively. If the Issuer is unable to manage interest rate risk effectively, the Issuer's performance could be adversely affected.

### **Hedging Transactions**

The Issuer may from time to time purchase or sell various financial instruments including forwards, swaps or options on currencies, securities and indices when seeking to mitigate risk associated with its investments; however, it is generally impossible to fully hedge an investment given the uncertainty as to the amount and timing of projected cash flows and investment returns, if any, on the Issuer's investments. Such investments may also be used for investment or speculative purposes which can lead to losses on both the Issuer's investments and the related transactions. Conversely, there will be times in which the Issuer believes that it is not advisable to enter into hedging transactions and instead elect to remain unhedged against particular types of risks that in other cases the Issuer hedges against; accordingly, the Issuer may be exposed to fluctuations in currencies and other market conditions specific to the underlying asset.

The success of the Issuer's hedging transactions will be subject to the Portfolio Manager's ability to predict correlations between the value of the portfolios' assets and the direction of currency exchange rates, interest rates and securities prices and similar matters. Therefore, while the Issuer may enter into such transactions to seek to reduce perceived risks, unanticipated changes in values may result in a poorer overall performance for the Issuer than if it had not engaged in any such hedging transaction. In addition, the degree of correlation between price movements of the instruments used in a hedging strategy and price movements in the portfolio position being hedged may vary, potentially leaving the Issuer with exposure to all or a portion of the risks being hedged.

### **Counterparty Risk**

The Issuer will be subject to various counterparty risks. For example, the Issuer may effect a portion of its transactions in 'over-the-counter' or 'interdealer' markets or through private transactions. The participants in such markets and the counterparties in such private transactions are typically not subject to credit evaluation and regulatory oversight as are members of 'exchange based' markets. This may expose the Issuer to the risk that a counterparty will not settle a transaction because of a credit or liquidity problem, thus causing the Issuer to suffer losses. Such 'counterparty risk' is accentuated for contracts with longer maturities where events may intervene to prevent settlement, or where the Issuer has concentrated its transactions with a single or small group of counterparties. The Issuer is not restricted from dealing with any particular counterparty or from concentrating any or all of its transactions with one counterparty.

### **General Risks of Secured Loans**

Certain loans held by the Issuer will be secured. While secured loans originated or purchased by the Issuer will often intend to be over-collateralised, the Issuer may be exposed to losses resulting from default and foreclosure. Therefore, the value of the underlying collateral, the creditworthiness of the borrower and the priority of the lien are each of great importance. The Issuer cannot guarantee the adequacy of the protection of the Issuer's

interests, including the validity or enforceability of the loan and the maintenance of the anticipated priority and perfection of the applicable security interests. Furthermore, the Issuer cannot assure that claims may not be asserted that might interfere with enforcement of the Issuer's rights. In the event of a foreclosure, the Issuer may assume direct ownership of the underlying asset. The liquidation proceeds upon sale of such asset may not satisfy the entire outstanding balance of principal and interest on the loan, resulting in a loss to the Issuer. Any costs or delays involved in the effectuation of a foreclosure of the loan or a liquidation of the underlying property will further reduce the proceeds and thus increase the loss.

### **Lower Credit Quality Loans**

There are no restrictions on the credit quality of the Issuer's loans. Loans purchased or arranged by the Issuer may be deemed to have substantial vulnerability to default in payment of interest and/or principal. Certain of the loans which the Issuer may acquire have large uncertainties or major risk exposures to adverse conditions, and may be considered to be predominantly speculative. Generally, such loans offer a higher return potential than better quality loans, but involve greater volatility of price and greater risk of loss of income and principal. The market values of certain of these loans also tend to be more sensitive to changes in economic conditions than better quality loans.

### **High Yield Debt**

The Issuer may invest a portion of its assets in debt, including, without limitation, "higher yielding" (and, therefore, generally higher risk) debt securities, when the Portfolio Manager believes that debt securities offer opportunities for capital appreciation. In most cases, such debt will be rated below "investment grade" or will be unrated and face ongoing uncertainties and exposure to adverse business, financial or economic conditions and the Issuer's failure to make timely interest and principal payments. The market for high-yield securities has experienced periods of volatility and reduced liquidity. The market values of certain of these debt securities may reflect individual corporate developments. It is likely that a general economic recession or a major decline in the demand for products and services, in which the obligor operates, could have a materially adverse impact on the value of such securities. In addition, adverse publicity and investor perceptions, whether or not based on fundamental analysis, may also decrease the value and liquidity of these debt securities.

### **Borrower Fraud**

Of paramount concern in acquiring loans is the possibility of material misrepresentation or omission on the part of borrower. Such inaccuracy or incompleteness may adversely affect the valuation of the collateral underlying the loans or may adversely affect the ability of the Issuer to perfect or effectuate a lien on the collateral securing the loan. The Issuer will rely upon the accuracy and completeness of representations made by borrowers to the extent reasonable, but cannot guarantee such accuracy or completeness or the adequacy or existence of documentation.

### **Lender Liability**

Under certain circumstances, lenders who have inappropriately exercised control of the management and policies of a debtor may be found liable for damages suffered by parties as a result of such actions. Accordingly, the Issuer may incur liabilities in respect of loans that exceed the amounts loaned.

### **Fraudulent Conveyance**

Under certain circumstances, payments to the Issuer may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment.

### **Risks Associated with Bankruptcy Cases**

Many of the events within a bankruptcy case are adversarial and often beyond the control of the creditors. While creditors generally are afforded an opportunity to object to significant actions, there can be no assurance that a bankruptcy court would not approve actions which may be contrary to the interests of the Issuer. Furthermore, there are instances where creditors and equity holders lose their ranking and priority as such if they are considered to have taken over management and functional operating control of a debtor.

Generally, the duration of a bankruptcy case can only be roughly estimated. The reorganisation of a company usually involves the development and negotiation of a plan of reorganisation, plan approval by creditors and confirmation by the bankruptcy court. This process can involve substantial legal, professional and administrative costs to the company and the Issuer; it is subject to unpredictable and lengthy delays; and during the process the company's competitive position may erode, key management may depart and the company may not be able to invest adequately. In some cases, the company may not be able to reorganise and may be required to liquidate assets. The debt of companies in financial reorganisation will in most cases not pay current interest, may not accrue interest during reorganisation and may be adversely affected by an erosion of the Issuer's Fundamental values. Such investments can result in a total loss of principal.

Investment in the debt of financially distressed companies domiciled outside the United States involves additional risks. Bankruptcy law and process may differ substantially from that in the United States, resulting in greater uncertainty as to the rights of creditors, the enforceability of such rights, reorganisation timing and the classification, seniority and treatment of claims. In certain developing countries, although bankruptcy laws have been enacted, the process for reorganisation remains highly uncertain. See "*Global Investments*."

U.S. bankruptcy law permits the classification of 'substantially similar' claims in determining the classification of claims in a reorganisation for purpose of voting on a plan of reorganisation. Because the standard for classification is vague, there exists a significant risk that the Issuer's influence with respect to a class of securities can be lost by the inflation of the number and the amount of claims in, or other gerrymandering of, the class. In addition, certain administrative costs and claims that have priority by law over the claims of certain creditors (for example, claims for taxes) may be quite high.

The Portfolio Manager, on behalf of the Issuer, may elect to serve on creditors' committees, equity holders' committees or other groups to ensure preservation or enhancement of the Issuer's positions as creditors or equity holders. A member of any such committee or group may owe certain obligations generally to all parties similarly situated that the committee represents. If the Portfolio Manager concludes that its obligations owed to the other parties as a committee or group member conflict with its duties owed to the Issuer, it may resign from that committee or group, and the Issuer may not realise the benefits, if any, of participation on the committee or group. In addition, and also as discussed above, if the Issuer is represented on a committee or group, it may be restricted or prohibited under applicable law from disposing of its investments in such company while it continues to be represented on such committee or group.

The Issuer may purchase creditor claims subsequent to the commencement of a bankruptcy case. Under judicial decisions, it is possible that such purchase may be disallowed by the bankruptcy court if the court determines that the purchaser has taken unfair advantage of an unsophisticated seller, which may result in the rescission of the transaction (presumably at the original purchase price) or forfeiture by the purchaser.

### **Risks relating to Structured Finance Securities:**

The Issuer's portfolios are expected to include investments in structured finance securities

(**“Structured Finance Securities”**). Structured Finance Securities are, generally, debt securities that entitle the holders thereof to receive payments of interest and principal that depend primarily on the cash flow from or sale proceeds of a specified pool of assets, either fixed or revolving, that by their terms convert into cash within a finite time period, together with rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of such securities. The evaluation of potential investments in Structured Finance Securities requires more detailed due diligence of large numbers of underlying assets and highly complex investment analysis on the part of the Portfolio Manager, including the use of complex models that depend on the accuracy of many underlying assumptions. There is no guarantee that such analytical models or the underlying assumptions used in such analytical model are accurate, relevant or complete. Furthermore, analytical models may not exist that would enable the Portfolio Manager to adequately evaluate such Structured Finance Securities.

Investing in Structured Finance Securities entails various risks: credit risks, liquidity risks, interest rate risks, market risks, operations risks, structural risks, geographical concentration risks, basis risks and legal risks. Structured Finance Securities are subject to the significant credit risks inherent in the underlying collateral and to the risk that the servicer fails to perform. Accordingly, such securities generally include one or more credit enhancements, which are designed to raise the overall credit quality of the security above that of the underlying collateral. However, insurance providers and other sources of credit enhancement may fail to perform their obligations, and there can be no assurance that the credit enhancement, if any, applicable to a Structured Finance Security will adequately cover any shortfalls in cash available to make payments on such Structured Finance Security as a result of delinquencies or defaults. Certain insurance providers and monoline insurers have recently experienced financial distress and declines in credit ratings and, to date, two of the major monoline insurers have suspended for at least a six-month period the issuance of financial guarantees and credit default swaps with respect to Structured Finance Securities. Such events may make it difficult to obtain insurance on Structured Finance Securities or related credit enhancements and may also reduce or eliminate the value of insurance and credit enhancements relating to previously issued Structured Finance Securities purchased by the Issuer. Structured Finance Securities are subject to risks associated with their structure and execution, including the process by which principal and interest payments are allocated and distributed to investors, how credit losses affect the issuing vehicle and the return to investors in such Structured Finance Securities, whether the collateral represents a fixed set of specific assets or accounts, whether the underlying collateral assets are revolving or closed-end, under what terms (including maturity of the structured finance instrument) any remaining balance in the accounts may revert to the issuing entity and the extent to which the entity that is the actual source of the collateral assets is obligated to provide support to the issuing vehicle or to the investors in such Structured Finance Securities. In addition, concentrations of Structured Finance Securities of a particular type, as well as concentrations of Structured Finance Securities issued or guaranteed by affiliated obligors, serviced by the same servicer or backed by underlying collateral located in a specific geographic region, may subject the Structured Finance Securities to additional risk.

Certain Structured Finance Securities held by the Issuer are expected to be subordinate in right of payment and rank junior to other securities that are secured by or represent an ownership interest in the same pool of assets. In addition, many of the related transactions have structural features that divert payments of interest and/or principal to more senior classes when the delinquency or loss experience of the pool exceeds certain levels. As a result, such securities have a higher risk of loss as a result of delinquencies or losses on the underlying assets. In certain circumstances, payments of interest may be reduced or eliminated for one or more payment dates. Additionally, as a result of cash flow being diverted to payments of principal of more senior classes, the average life of such securities may lengthen. Subordinate Structured Finance Securities generally do not have the right to call a default or vote on remedies following a default unless more senior securities have been paid in full. As a result, a shortfall in payments to subordinate investors in Structured Finance Securities will generally not result in a default being declared on the transaction nor in an

acceleration or restructuring of the obligations thereunder. Furthermore, because subordinate Structured Finance Securities may represent a relatively small percentage of the size of an asset pool being securitised, the impact of a relatively small loss on the overall asset pool may be substantial on the holders of such subordinate security.

Structured Finance Securities are also subject to the risks of the assets securitised. In particular, Structured Finance Securities are subject to risks related to the quality of the control systems and procedures used by the parties originating and servicing the securitised assets. In recent months, deficiencies revealed in these systems have resulted in higher-than-expected borrower delinquencies or other factors affecting the value of the underlying assets which has resulted in substantial losses by holders of Structured Finance Securities.

#### **Risks relating to CMBS:**

The Issuer's portfolio may invest in commercial mortgage-backed securities ("CMBS"). CMBS are, generally, securities backed by obligations (including certificates of participation in obligations) that are principally secured by mortgages on real property or interests therein having a multifamily or commercial use, such as regional malls, other retail space, office buildings, industrial or warehouse properties, hotels, nursing homes and senior living centres. CMBS are subject to particular risks, including lack of standardised terms, shorter maturities than residential mortgage loans and payment of all or substantially all of the principal only at maturity rather than regular amortisation of principal. Additional risks may be presented by the type and use of a particular commercial property. Special risks are presented by hospitals, nursing homes, hospitality properties and certain other property types. Commercial property values and net operating income are subject to volatility, which may result in net operating income becoming insufficient to cover debt service on the related mortgage loan. The repayment of loans secured by income-producing properties is typically dependent upon the successful operation of the related real estate project rather than upon the liquidation value of the underlying real estate. Furthermore, the net operating income from and value of any commercial property is subject to various risks, including changes in general or local economic conditions and/or specific industry segments; the solvency of the related tenants; declines in real estate values; declines in rental or occupancy rates; increases in interest rates, real estate tax rates and other operating expenses; changes in governmental rules, regulations and fiscal policies; acts of God; terrorist threats and attacks and social unrest and civil disturbances. The exercise of remedies and successful realisation of liquidation proceeds relating to CMBS may be highly dependent on the performance of the servicer or special servicer. There may be a limited number of special servicers available, particularly those that do not have conflicts of interest.

#### **Risks relating to RMBS:**

The Issuer may invest in residential mortgage-backed securities ("RMBS"). RMBS are securities whose payments depend (except for rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of such securities) primarily on the cash flow from residential mortgage loans made to borrowers that are secured (on a first priority basis or second priority basis, subject to permitted liens, easements and other encumbrances) by residential real estate (one to four-family properties) the proceeds of which are used to purchase or build such real estate (or to refinance indebtedness previously so used). RMBS are subject to various risks as described below.

Credit-related risk on RMBS arises from losses due to delinquencies and defaults by the borrowers in payments on the underlying mortgage loans and breaches by originators and servicers of their obligations under the underlying documentation pursuant to which RMBS are issued. Residential mortgage loans are obligations of the borrowers thereunder only and are not typically insured or guaranteed by any other person or entity. The rate of delinquencies and defaults on residential mortgage loans and the aggregate amount of the resulting losses will be affected by a number of factors, including general economic conditions, particularly those in the area where the related mortgaged property is located, the

level of the borrower's equity in the mortgaged property and the individual financial circumstances of the borrower. If a residential mortgage loan is in default, foreclosure on the related residential property may be a lengthy and difficult process involving significant legal and other expenses. The net proceeds obtained by the holder on a residential mortgage loan following the foreclosure on the related property may be less than the total amount that remains due on the loan. The prospect of incurring a loss upon the foreclosure of the related property may lead the holder of the residential mortgage loan to restructure the residential mortgage loan or otherwise delay the foreclosure process.

In addition to the foregoing considerations, the market for defaulted residential mortgage loans and foreclosed real estate properties may be very limited. In particular, the economic conditions that lead to a higher rate of delinquencies and defaults on a portfolio of real estate mortgage loans may also lead to a reduction in the value of the related real estate properties, which in turn will result in greater losses upon a foreclosure of the real estate properties. At any one time, a portfolio of RMBS may be backed by residential mortgage loans that are highly concentrated in specific geographical regions. As a result, the performance of such residential mortgage loans may be more susceptible to a downturn in the economy, including in particular industries that are highly represented in such states or regions, natural calamities and other adverse conditions affecting such areas. In addition, the residential mortgage loans underlying RMBS may include so-called "jumbo" residential mortgage loans, having original principal balances that are significantly higher than is generally the case for residential mortgage loans. If the portfolio of residential mortgage loans underlying an RMBS includes a high concentration of "jumbo" residential mortgage loans, the performance of such RMBS will be more susceptible to the performance of individual borrowers and adverse economic conditions in general than would otherwise be the case.

Delinquencies and defaults on residential mortgage loans have increased significantly in recent years and may continue to increase. In addition, residential property values in many states and geographic areas in the U.S. are depressed, in some cases significantly, after extended periods during which those values appreciated. A continued decline in those values or a lack of increase in those values may result in additional increases in delinquencies and defaults on residential mortgage loans generally and with respect to any residential mortgage loans where the aggregate loan amounts (including any subordinate loans) are close to or greater than the related property values, which may make it difficult to refinance or sell the related property. More generally, the continued slowdown in the U.S. economy and continuing slow home sales increase the risk that the supply of RMBS may be significantly reduced and/or that the investment performance of RMBS as an asset class may be significantly impaired. The economic downturn experienced in the U.S. starting in 2008 and the more serious economic downturn experienced in certain geographic areas of the U.S., including in particular, areas of the U.S. where rates of delinquencies and defaults on residential mortgage loans have already accelerated, may further contribute to the higher rates of delinquencies and defaults on the residential mortgage loans underlying the RMBS. There also can be no assurance that areas of the U.S. that have mostly avoided higher rates of delinquencies and defaults on residential mortgage loans will continue to do so if an economic downturn in the economy continues at the national level.

Another factor that may be contributing to, and may in the future result in, higher delinquency and default rates is the increase in monthly payments on adjustable-rate mortgage loans. Any increase in prevailing market interest rates may result in increased payments for borrowers who have adjustable-rate mortgage loans. Moreover, with respect to hybrid mortgage loans after their initial fixed-rate period or other so-called adjustable-rate mortgage loans, interest-only products or products having a lower rate, and with respect to mortgage loans with a negative amortisation feature which reach their negative amortisation cap, borrowers may experience a substantial increase in their monthly payment even without an increase in prevailing market interest rates. The past performance of the market for RMBS is not a reliable indicator of the future performance of RMBS because of the unprecedented and unpredictable nature of the recent performance of the residential mortgage loan market and the ongoing slowdown in the credit markets.

As a result of rising concerns about increases in delinquencies and defaults on residential mortgage loans (particularly on subprime and adjustable-rate mortgage loans) and as a result of increasing concerns about the financial strength of originators and servicers and their ability to perform their obligations with respect to RMBS, there has been an adverse change in the market sentiments of investors about the market values and volatility and the degree of risk of RMBS generally.

Some or all of the underlying residential mortgage loans in an issue of RMBS may have a balloon payment due on the applicable maturity date. Balloon residential mortgage loans involve a greater risk to a lender than fully amortising loans, because the ability of a borrower to pay such amount will normally depend on its ability to obtain refinancing of the related mortgage loan or sell the related mortgaged property at a price sufficient to permit the borrower to make the balloon payment, which will depend on a number of factors prevailing at the time such refinancing or sale is required, including, without limitation, the strength of the residential real estate markets, interest rates and general economic conditions and the financial condition of the borrower. If borrowers are unable to make such balloon payments, the related issue of RMBS will likely experience losses.

A number of the originators and servicers of the residential mortgage loans underlying the RMBS, including some of the largest originators and servicers in the residential mortgage loan market, have experienced serious financial difficulties in recent years, including U.S. federal insolvency proceedings. These difficulties have resulted from many factors, including general conditions in the credit markets, increased competition among originators for borrowers, decreased originations by such originators of mortgage loans and increased delinquencies and defaults on such mortgage loans, as well as from increases in claims for repurchases of mortgage loans previously sold by them under agreements that require repurchase in the event of breaches of representations regarding loan quality and characteristics. Such difficulties may affect the performance of RMBS that are backed by those mortgage loans. Furthermore, the inability of an originator to repurchase such mortgage loans in the event of loan representation breaches or the servicer to repurchase such mortgage loans upon a breach of its servicing obligations also may affect the performance of RMBS that are backed by those mortgage loans. Delinquencies and losses on, and, in some cases, claims for repurchase by the originator of, mortgage loans originated by some mortgage lenders have recently increased as a result of inadequate underwriting procedures and policies, including inadequate due diligence, failure to comply with predatory and other lending laws and, particularly in the case of any "no documentation" or "limited documentation" mortgage loans that may support RMBS, inadequate verification of income and employment history. Delinquencies and losses on, and claims for repurchase of, mortgage loans originated by some mortgage lenders have also resulted from fraudulent activities of borrowers, lenders, appraisers, and other residential mortgage industry participants such as mortgage brokers, including misstatements of income and employment history, identity theft and overstatements of the appraised value of mortgaged properties. Many of these originators and servicers are very highly leveraged. These difficulties may also increase the chances that these entities may default on their warehousing or other credit lines or become insolvent or bankrupt and thereby increase the likelihood that repurchase obligations will not be fulfilled and the potential for loss to holders and subordinated security holders.

The servicers of RMBS are often the same entities as, or affiliates of, the originators of these mortgage loans. Accordingly, the financial risks relating to originators of RMBS described immediately above also may affect the servicing of RMBS. In the case of such servicers, and other servicers, financial difficulties may have a negative effect on the ability of servicers to pursue collection on mortgage loans that are experiencing increased delinquencies and defaults and to maximise recoveries on sale of underlying properties following foreclosure.

RMBS typically provide that the servicer is required to make advances in respect of delinquent mortgage loans. However, servicers experiencing financial difficulties may not be

able to perform these obligations or other obligations that they may have to other parties in transactions involving these securities. Like originators, these entities are typically very highly leveraged. Such difficulties may cause defaults under their financing arrangements. In certain cases, such servicers may be forced to seek bankruptcy protection. Servicers who have sought bankruptcy protection may not be required to advance such amounts. Even if a servicer were able to advance amounts in respect of delinquent mortgage loans, its obligation to make such advances may be limited to the extent that it does not expect to recover such advances due to the deteriorating credit of the delinquent mortgage loans or declining value of the related mortgaged properties. Moreover, servicers may overadvance against a particular mortgage loan or charge too many costs of resolution or foreclosure of a mortgage loan to a securitisation, which could increase the potential losses to holders of RMBS. In such transactions, a servicer's obligation to make such advances may also be limited to the amount of its servicing fee. In addition, if an issue of RMBS provides for interest on advances made by the servicer, in the event that foreclosure proceeds or payments by borrowers are not sufficient to cover such interest, such interest will be paid to the servicer from available collections or other mortgage income, thereby reducing distributions made on RMBS and, in the case of senior-subordinated RMBS described below, first from distributions that would otherwise be made on the most subordinated RMBS of such issuer. Any such financial difficulties may increase the possibility of a servicer termination and the need for a transfer of servicing and any such liabilities or inability to assess such liabilities may increase the difficulties and costs in affecting such transfer and the potential loss, through the allocation of such increased cost of such transfer, to subordinated security holders.

There can be no assurance that originators and servicers of mortgage loans will not continue to experience serious financial difficulties or experience such difficulties in the future, including becoming subject to bankruptcy or insolvency proceedings, or that underwriting procedures and policies and protections against fraud will be sufficient in the future to prevent such financial difficulties or significant levels of default or delinquency on mortgage loans. Because the recent financial difficulties experienced by such originators and services is unprecedented and unpredictable, the past performance of the residential mortgage loans originated and serviced by them (and the corresponding performance of the related RMBS) is not a reliable indicator of the future performance of such residential mortgage loans (or the related RMBS).

RMBS are susceptible to prepayment risks. Except in the case of certain types of RMBS, the mortgage loans underlying RMBS generally do not contain prepayment penalties and a reduction in market interest rates will increase the likelihood of prepayments on the related RMBS, resulting in a reduction in yield to maturity for most holders of such securities. In the case of certain home equity loan securities and certain types of RMBS, even though the underlying mortgage loans often contain prepayment premiums, such prepayment premiums may not be sufficient to discourage borrowers from prepaying their mortgage loans in the event of a reduction in market interest rates, resulting in a reduction in the yield to maturity for holders of the related RMBS. In addition to reductions in the level of market interest rates and the prepayment provisions of the mortgage loans, repayments on the residential mortgage loans underlying an issue of RMBS may also be affected by a variety of economic, geographic and other factors, including the magnitude of the difference between the interest rates on the underlying residential mortgage loans (giving consideration to the cost of refinancing) and prevailing mortgage rates and the availability of refinancing. In general, if prevailing interest rates fall significantly below the interest rates on the related residential mortgage loans, the rate of prepayment on the underlying residential mortgage loans would be expected to increase. Conversely, if prevailing interest rates rise to a level significantly above the interest rates on the related mortgage loans, the rate of prepayment would be expected to decrease. Prepayments could reduce the yield received on the related issue of RMBS.

As described above, RMBS typically contain provisions that require repurchase of mortgage loans by the originator or other seller in the event of a breach of a representation or warranty regarding loan quality and characteristics of such loan. Any repurchase of a mortgage loan



as a result of a breach has the same effect on the yield received on the related issue of RMBS as a prepayment of such mortgage loan. Any increase in breaches of representations and the consequent repurchases of mortgage loans that result from inadequate underwriting procedures and policies and protections against fraud as described above will have the same effect on the yield on the related RMBS as an increase in prepayment rates.

Extension risk is the converse of prepayment risk. Extension, or slower prepayments of the underlying mortgage loans, would extend the time it would take to receive cash flows and would generally compress the yield on RMBS.

The prices of RMBS may decline substantially, for reasons that may not be attributable to any of the other risks described in these Listing Particulars. In particular, purchasing assets at what may appear to be "undervalued" levels is no guarantee that these assets will not be trading at even more "undervalued" levels on a subsequent date or at the time of sale. It may not be possible to predict, or to hedge against, such "spread widening" risk.

The rate of interest payable on certain RMBS may be set or effectively capped at the weighted average net coupon of the underlying mortgage loans themselves, often referred to as an "available Issuers cap." As a result of this cap, the return to the holder of such RMBS is dependent on the relative timing and rate of delinquencies and prepayments of mortgage loans bearing a higher rate of interest. In general, early prepayments will have a greater negative impact on the yield to the holder of such RMBS.

Because RMBS generally are ownership or participation interests in pools of mortgage loans secured by a pool of one to four-family residential properties underlying the mortgage loan pool, RMBS are entitled to payments provided for in the underlying agreement only when and if Issuers are generated by the underlying mortgage loan pool. The likelihood of the return of interest and principal may be assessed as a credit matter. However, the holders of RMBS do not have the legal status of secured creditors, and cannot accelerate a claim for payment on their securities, or force a sale of the mortgage loan pool in the event that insufficient Issuers exist to pay such amounts on any date designated for such payment. The holders of RMBS do not typically have any right to remove a servicer solely as a result of a failure of the mortgage pool to perform as expected.

RMBS may be subordinated to one or more other senior classes of securities of the same series for purposes of, among other things, offsetting losses and other shortfalls with respect to the related underlying mortgage loans. In addition, in the case of certain RMBS, no distributions of principal will generally be made with respect to any class until the aggregate principal balances of the corresponding senior classes of securities have been reduced to zero. As a result, the subordinate classes are more sensitive to risk of loss, writedowns, the nonfulfillment of repurchase obligations, over advancing on a pool of loans and the costs of transferring servicing than senior classes of such securities.

Legal risks may arise as a result of the procedures followed in connection with the origination of the mortgage loans or the servicing thereof which may be subject to various U.S. federal, state and other laws (including, without limitation, predatory lending laws) and public policies and principles of equity regulating interest rates and other charges. Such laws and policies may require certain disclosures, require licensing of originators, prohibit discriminatory lending practices, regulate the use of consumer credit information and debt collection practices or, limit the servicer's ability to collect all or part of the principal of or interest on a residential mortgage loan or entitle the borrower to a re-issue of amounts previously paid by it or subject the servicer to damages and sanctions. Specifically, provisions of U.S. federal predatory lending laws, such as the U.S. Federal Truth-in-Lending Act (as supplemented by the U.S. Home Ownership and Equity Protection Act of 1994) and Regulation Z, and various recently enacted state predatory lending laws provide that a purchaser or assignee of specified types of residential mortgage loans (including an issuer of RMBS) may be held liable for violations by the originator of such mortgage loans. Under such assignee liability provisions, a borrower is generally given the right to assert against a purchaser of its

mortgage loan any affirmative claims and defences to payment such borrower could assert against the originator of the loan or, where applicable, the home improvement contractor that arranged the loan. Liability under such assignee liability provisions could, therefore, result in a disruption of cash flows allocated to the holders of RMBS where either the issuer of such RMBS is liable in damages or is unable to enforce payment by the borrower. In most but not all cases, the amount recoverable against a purchaser or assignee under such assignee liability provisions is limited to amounts previously paid and still owed by the borrower. Moreover, sellers of residential mortgage loans to an issuer of RMBS typically represent that the loans have been originated in accordance with all applicable laws and in the event such representation is breached, the seller typically must repurchase the offending loan.

Notwithstanding these protections, an issuer of RMBS may be exposed to an unquantifiable amount of potential assignee liability because, first, the amount of potential assignee liability under certain predatory lending laws is unclear and has yet to be litigated, and, second, in the event a predatory lending law does not prohibit class action lawsuits, it is possible that an issuer of RMBS could be liable in damages for more than the original principal amount of the offending loans held by it and must then seek contribution from other parties, who may no longer exist or have adequate Issuers available.

In addition, structural and legal risks of RMBS include the possibility that, in a bankruptcy or similar proceeding involving the originator or the servicer (often the same entity or affiliates), the assets of the issuer could be treated as never having been truly sold by the originator to the issuer and could be substantively consolidated with those of the originator, or the transfer of such assets to the issuer could be voided as a fraudulent transfer. Challenges based on such doctrines could result also in cash flow delays and losses on the related issue of RMBS.

In some cases, servicers of RMBS have been the subject of legal proceedings involving the origination and/or servicing practices of such servicers. Large groups of private litigants and U.S. state attorneys general have brought such proceedings. Because of the large volume of mortgage loans originated and serviced by such servicers, such litigation may cause heightened financial strain on such entities. In other cases, origination and servicing practices may cause or contribute to such strain, because of representation and warranty repurchase liability arising in mortgage-backed securities and mortgage loan sale transactions. Any such strain could cause any such servicer to service below required standards, causing delinquencies and losses in any related mortgage-backed securities transaction to rise, and in extreme cases could cause the servicer to seek the protection of any applicable bankruptcy or insolvency law. In any such proceeding, it is unclear whether the fees that the servicer charges in such transactions would be sufficient to permit that servicer or a successor servicer to service the mortgage loans in such transaction adequately. If such fees had to be increased, it is likely that the most subordinated security holders in such transactions would be effectively required to pay such increased fees. Finally, these entities may be the subject of future laws designed to protect consumers from defaulting on their mortgage loans. Such laws may have an adverse effect on the cash flows paid under such RMBS.

A significant number of lenders specializing in residential mortgages have sought bankruptcy protection, shut down or been refused further financings from their lenders. In addition, certain lenders that service and/or issue RMBS have been investigated by U.S. federal and/or state authorities, including the SEC. As a result of such investigations and general concerns about the adequacy or accuracy of disclosure of risks to borrowers and their understanding of such risks, the newly enacted Dodd-Frank Wall Street Reform and Consumer Protection Act contains provisions relating to the regulation of many of the participants in the RMBS market. U.S. financial regulators will be implementing new guidelines for the mortgage industry as a result of the legislation. Guidelines, together with the other factors described in this paragraph, may make it more difficult for borrowers with weaker credit to refinance, which may lead to further increases in delinquencies, extensions in duration and losses in mortgage-related assets. Furthermore, because some mortgage loans have high, and as property values decline increasing, loan-to-value ratios, recoveries

on some defaulted mortgage loans are more likely to be less than the amounts owed under such mortgage loans, resulting in higher net losses than would have been the case had property values remained the same or increased.

As a result of recent market developments, expected increased regulation and the financial distress faced by some servicers, the General Partner expects that the number of servicers of RMBS will be reduced. If only a few servicers were to remain in the RMBS servicing business, there would likely be an increased risk that if any one servicer experienced further financial distress, including bankruptcy, reorganization or insolvency, such event could adversely affect the value of not just RMBS serviced by such servicer but also the value of RMBS serviced by other servicers.

Credit ratings evaluate the safety of the principal and interest payments, not the market value risk, of securities. Rating agencies may fail to make timely changes to credit ratings to reflect credit events occurring since a particular rating was given, so that outstanding ratings may not reflect the issuer's current credit standing. Conversely, rating agencies may re-rate a security which could cause substantial loss as the ratings are downgraded. As a result of the foregoing, the Issuer's investments in RMBS may experience significant credit rating volatility.

#### **Risks relating to ABS:**

Asset backed securities ("**ABS**") generally refer to securities backed by assets other than mortgages, mortgage-backed securities or other mortgage-related assets. The Issuer may be exposed to the risk of ABS both indirectly through potential investments in CDO securities that are backed by ABS and directly through potential investments in ABS. The investment characteristics of ABS differ from traditional debt securities. Among the major differences are that interest and principal payments are made more frequently, usually monthly, and that principal may be prepaid at any time because the underlying assets generally may be prepaid at any time. Credit card receivables, automobile, boat and recreational vehicle instalment sales contracts, commercial and industrial bank loans, home equity loans and lines of credit, manufactured housing loans and various types of accounts receivable commonly support ABS. ABS securities present certain risks that are not presented by mortgage-backed securities. Primarily, ABS securities are often backed by unsecured receivables. Credit card receivables, for example, are generally unsecured and the debtors are entitled to the protection of a number of U.S. federal and state consumer loan laws, many of which give such debtors the right to set off certain amounts owed on the credit cards, thereby reducing the balance due. Most issuers of automobile receivables permit the servicers to retain possession of the underlying obligations. If the servicer were to sell these obligations to another party, there is a risk that the purchaser would acquire an interest superior to that of the holders of the related automobile receivables. In addition, because of the large number of vehicles involved in a typical issuance and technical requirements under applicable laws, the trustee for the holders of the automobile receivables may not have a proper security interest in all of the obligations backing such receivables. Therefore, there is a possibility that recoveries on repossessed collateral may not, in some cases, be available to support payments on these securities. The risk of investing in ABS is ultimately dependent upon payment of consumer loans by the debtor.

In general, "premium" securities (securities whose market values exceed their principal or par amounts) are adversely affected by faster than anticipated prepayments, and "discount" securities (securities whose principal or par amounts exceed their market values) are adversely affected by slower than anticipated prepayments. Because many ABS will be discount securities when interest rates are high, and will be premium securities when interest rates are low, these ABS may be adversely affected by changes in prepayments in any interest rate environment. The adverse effects of prepayments may impact the Issuer's portfolio by either causing its investments to experience outright losses or to experience losses resulting from the underperformance of particular investments relative to hedge positions taken by the Issuer on such investments.

Structural and legal risks of ABS include the possibility that, in a bankruptcy or similar proceeding involving the originator or the servicer (often the same entity or its affiliates), a court having jurisdiction over the proceeding could determine that, because of the degree to which cash flows on the assets of the issuing vehicle may have been commingled with cash flows on the originator's other assets (or similar reasons), (i) the assets of the issuing vehicle could be treated as never having been truly sold by the originator to the issuing vehicle and could be substantively consolidated with those of the originator, or (ii) the transfer of such assets to the issuer could be voided as a fraudulent transfer. The time and expense related to a challenge of such a determination also could result in losses and/or delayed cash flows.

### **Real Estate Markets in the U.K. and certain other OECD Countries:**

The markets in the United States, United Kingdom, Ireland, Spain, Portugal, Greece and certain other OECD countries have experienced declines in real estate values in recent years. The decline in real estate values has been coupled with an increase in unemployment rates which has led to a reduction in demand for new homes and other real estate assets. There is a risk that high unemployment rates could continue or that structural unemployment could rise, both of which would have a further adverse effect on real estate values. Delinquencies and losses with respect to residential mortgage loans have increased in recent months, and may continue to increase. In addition, housing prices and appraisal values in many states of the United States have declined, after extended periods of significant appreciation. A continued decline or an extended flattening of those values is likely to result in additional increases in delinquencies and losses on residential mortgage loans, particularly with respect to second homes, investor properties and mortgage loan, the aggregate loan amount of which (including any subordinate liens) is close to or greater than the related property value.

### **Trade Errors**

On occasion, errors may occur with respect to trades executed on behalf of the Issuer. Trade errors can result from a variety of situations, including, for example, when the wrong security is purchased or sold, or when the wrong quantity is purchased or sold (e.g., 1,000 shares instead of 10,000 shares are traded). Trade errors frequently result in losses but may, occasionally, result in gains. The Portfolio Manager will endeavour to detect trade errors prior to settlement and correct and/or mitigate them in an expeditious manner. To the extent an error is caused by a third party, such as a broker, the Portfolio Manager will strive to recover any losses associated with such error from such third party. The Portfolio Manager will determine whether any trade error has resulted from gross negligence on its part, and, unless it finds that to be the case, any losses will be borne by (and any gains will benefit) the Issuer. The Portfolio Manager will establish internal policies regarding the manner in which such determinations are to be made, but investors should be aware that, in making such determinations, the Portfolio Manager will have a conflict of interest. Generally, the Portfolio Manager will not be held accountable for trade errors that do not breach the standard of care set forth above.

### **Real Estate Risk**

The value of the real property and related assets underlying mortgage loans is subject to market conditions. Changes in the real estate market may adversely affect the value of the collateral and thereby lower the value to be derived from a liquidation. In addition, adverse changes in the real estate market increase the probability of default, as the incentive of the borrower to retain equity in the property declines. Furthermore, many of the properties which will secure loans originated or purchased by the Issuer may be suffering varying degrees of financial distress or may be located in economically distressed areas.

### **Equity Securities**

The Issuer may have exposure to publicly-traded and privately-held equity securities (whether by virtue of direct investments, or as a result of debt-for-equity swaps arising from restructurings in respect of pre-acquired debt securities). Although equity securities have historically generated higher average total returns than fixed-income securities over the long term, equity securities also have experienced significantly more volatility in those returns and in recent years have significantly under performed relative to fixed-income securities. Any equity securities acquired by the Issuer may fail to appreciate and may decline in value or become worthless.

### **Convertible Securities, Rights and Warrants**

The Issuer may invest in hybrid securities that may be exchanged for, converted into or exercised to acquire a predetermined number of shares of an issuer's common stock at the option of the holder during a specified time period (such as convertible preferred stocks, convertible debentures, stock purchase rights, and warrants). Convertible securities generally pay interest or dividends and provide for participation in the appreciation of the underlying common stock but at a lower level of risk because the yield is higher and the security is senior to common stock. Convertible debt securities purchased by the Issuer that are acquired for their equity characteristics are not subject to minimum rating requirements.

The value of a convertible security is a function of its "investment value" (determined by its yield in comparison with the yields of other securities of comparable maturity and quality that do not have a conversion privilege) and its "conversion value" (the security's worth, at market value, if converted into the underlying common stock). The credit standing of the issuer and other factors may also affect the investment value of a convertible security. If the conversion value is low relative to the investment value, the price of the convertible security is governed principally by its investment value. To the extent the market price of the underlying common stock approaches or exceeds the conversion price, the price of the convertible security is increasingly influenced by its conversion value.

Convertible securities may also include warrants, often publicly traded, that give a holder the right to purchase at any time during a specified period a predetermined number of shares of common stock at a fixed price but that do not pay a fixed dividend. Their value depends primarily on the relationship of the exercise price to the current and anticipated price of the underlying securities.

### **Environmental Hazards**

Under environmental laws enacted by Federal and state governments, owners of property may be liable for the clean up and removal of hazardous substances even where the present owner was not responsible for placing the hazardous substances on the property or where the property was contaminated prior to the time the owner took title. The kinds of hazardous substances for which liability may be incurred include, inter alia, chemicals and other materials commonly used by small businesses and manufacturing operations. The costs of removal and clean-up of hazardous substances and wastes can be extremely expensive and, in some cases, can exceed the value of a property. If any property acquired by an Issuer through purchase or foreclosure was found to have an environmental problem, the Issuer could incur substantial costs and suffer a complete loss of its investment in such property as well as of other Issuer assets. In addition, USTs, asbestos, mold and other hazards not known today may become known at a later date.

### **Non-Irish Taxation**

With respect to certain countries, there is a possibility of expropriation, confiscatory taxation, imposition of withholding or other taxes on dividends, interest, capital gains or other income, limitations on the removal of funds or other assets of the Issuer, political or social instability or diplomatic developments that could affect investments in those countries. An issuer of securities may be domiciled in a country other than the country in whose currency the

instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other.

It is anticipated that the Issuer will not be subject to tax in a jurisdiction other than Ireland (other than in relation to taxes withheld from the Issuer's receipts from certain jurisdictions). There can be no guarantee, however, that this will be the case. The Issuer will appoint the Portfolio Manager who may appoint sub-Portfolio Managers with the result that a permanent establishment of the Issuer may be created in a jurisdiction other than Ireland such that the Issuer may be subject to tax in that jurisdiction.

### **Irish Taxation**

The Issuer is incorporated in and resident for tax purposes in Ireland. Accordingly, it is subject to Irish corporation tax on its worldwide income and gains. The current rates of Irish corporation tax are 12.5% for certain trading income, 25% for all other income and 25% for capital gains. It is anticipated that the Issuer will be subject to the higher rate of Irish corporation tax (currently 25%). The rate of tax and the methods of computing the tax base in respect of the Issuer's business in Ireland can change depending on changes in Irish law. If the effective tax burden the Issuer suffers in Ireland increases above its anticipated level, returns to Security Holders will decrease. There can be no guarantee that no such changes will not be introduced.

### **No Gross-Up**

In the event that any withholding or deduction for or on account of tax is imposed on payments on the Securities, the Security Holders will not be entitled to receive additional amounts to compensate for such withholding tax.

### **Calls on the Securities**

In order to fund the ongoing activities of the Issuer, the Issuer will make further calls in respect of the unpaid Stated Amounts of the Securities. If a holder is not able or refuses to meet the call the Issuer may not be able to complete a transaction that it wishes to enter into. There is no guarantee that the holders of the Securities will honour each call made on the Securities. The Issuer is entitled to cancel Securities in respect of which a further call is not complied with.

### **Examination under Irish Law**

Examination 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.

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 courts for the appointment of an examiner. The examiner, once appointed, has the power to set aside contracts and arrangements entered into by the company after his appointment and, in certain circumstances, can avoid a negative pledge given by the company prior to his appointment.

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

be impaired by implementation of the scheme arrangement.

The primary risks to the Security Holders if any examiner were to be appointed with respect to the Issuer are as follows:

- (i) the potential for such a scheme of arrangement being approved involving the writing down of the amounts due by the Issuer to the Security Holders;
- (ii) the potential for the examiner to seek to set aside any negative pledge in the Securities or the Transaction Documents prohibiting the creation of a security or the incurring of borrowings by the Issuer to enable the examiner to borrow to fund the Issuer during the protection period; and
- (iii) in the event that a scheme of arrangement is not approved and the Issuer subsequently goes into liquidation, the examiner's remuneration and expenses (including certain borrowings incurred by the examiner on behalf of the Issuer and approved by the Irish High Court) will take priority over the monies and liabilities which, from time to time, are or may become due, owing or payable by the Issuer to the Security Holders.

***The foregoing list of risk factors does not purport to be a complete enumeration or explanation of the risks involved in an investment in the Securities. Prospective Security Holders should consult with their own advisors before deciding to invest in the Securities.***

## TERMS AND CONDITIONS OF THE SECURITIES

The EUR 100,000,000 Asset Backed Securities due 2018 (the “**Securities**”, which expression shall, unless the context otherwise requires include any further securities issued pursuant to Condition 14 and forming a single series with the Securities) of Vista Asset Funding (Ireland) Limited (the “**Issuer**”) are (a) constituted by, subject to and have the benefit of, a trust deed dated 10 February 2012 (the “**Closing Date**”) (as amended or supplemented from time to time, the “**Trust Deed**”) between the Issuer and BNY Mellon Corporate Trustee Services Limited as trustee (the “**Trustee**”, which expression includes all persons for the time being appointed as trustee or trustees under the Trust Deed) and (b) the subject of an agency agreement dated 10 February 2012 (as amended or supplemented from time to time, the “**Agency Agreement**”) between the Issuer and The Bank of New York Mellon (acting through its London Branch) as Paying Agent and Account Bank (the “**Paying Agent**” and “**Account Bank**” in respect of the Securities), The Bank of New York Mellon (acting through its London Branch) as Custodian (the “**Custodian**” in respect of the Securities) and The Bank of New York Mellon (Luxembourg) S.A. as Registrar (the “**Registrar**” in respect of the Securities) (which expressions include any successor Paying Agent, Account Bank, Custodian or Registrar appointed from time to time in connection with the Securities), and Mount Kellett Capital Management LP as Portfolio Manager (the “**Portfolio Manager**”) and the Trustee.

Certain provisions of the following conditions (the “**Conditions**”) are summaries of the Trust Deed or the Agency Agreement and are subject to their detailed provisions. The holders of the Securities (the “**Security Holders**” which expression shall be construed in accordance with Condition 1.1) are bound by, and are deemed to have notice of, all the provisions of the Trust Deed and those provisions of the Agency Agreement applicable to them. Copies of the Trust Deed and the Agency Agreement are available upon reasonable notice for inspection by Security Holders during normal business hours at the Specified Offices (as defined in the Agency Agreement) of the Paying Agent, the initial Specified Offices of which are set out below. Copies are also available for inspection by Security Holders during normal business hours at the registered office for the time being of the Trustee, being at the date hereof One Canada Square, London E14 5AL, United Kingdom.

### 1. **Form, Denomination and Title**

#### 1.1. *Form and Denomination*

The Securities are in registered form. A Security Holder will receive upon issue of the Securities physical certificates (the “**Certificates**”) in respect of its Securities. Certificates shall be serially numbered and in denominations of EUR 1,000,000 or integral multiples of EUR 1,000 in excess thereof.

#### 1.2. *Paid-Up Amount*

On the Closing Date, the initial holder of a Security will subscribe for an amount that is less than the amount (such initial amount, the “**Subscription Amount**”) expressed as the “**Stated Amount**” on the face of a Certificate in respect of such Security (the “**Stated Amount**”) and such Subscription Amount and the name and address of the relevant Security Holder, in accordance with the terms of the Agency Agreement, will be recorded by the Registrar in the Register. On a Capital Call Date (as defined in Condition 8 below), the Registrar will record in the Register the Capital Amount (as defined in Condition 8 below) paid by such holder on that Capital Call Date. In the event the Issuer satisfies all or part of a Periodic Return Payment due by reinvestment to increase the Paid-Up Amount on a Security, the Issuer will arrange for the Registrar (subject to Condition 4.3 being complied with) to record in the Register the amount of the Periodic Return Reinvestment Amount (as defined in Condition 4 below) in respect of the relevant Security (subject to Condition 5.1, the sum of the Subscription Amount and all such Capital Amounts and all such Periodic Return Reinvestment Amounts (and less any applicable Periodic Return Excess) from time to time



so recorded referred to as the **"Paid-Up Amount"** with respect to such Security).

The Issuer may reduce the Paid-Up Amount of a Security by repaying all or some of amounts of principal representing the then current Paid-Up Amount. The Issuer may subsequently, upon exercise of a Capital Call in accordance with the Terms and Conditions, increase the Paid-Up Amount of a Security previously repaid up to an amount equal to (but not greater than) the Stated Amount.

### 1.3. *Certificates*

References in these Conditions to Securities shall include the Certificates.

### 1.4. *The Register; Title*

The Issuer will cause to be kept at the registered office of the Registrar and maintained by the Registrar the register (the **"Register"**) on which shall be entered the names and addresses of the holders of the Securities, the particulars of such Securities (including details of the Subscription Amount, any Capital Amounts, any Periodic Return Payments and the Paid-Up Amount) held by them and all transfers and redemptions of such Securities. No transfer of such Securities will be valid unless and until entered on the Register.

With respect to the Securities, the person listed in the Register as the holder of any such Security will (to the fullest extent permitted by applicable law) be deemed and treated at all times, by all persons and for all purposes (including the making of payments), as the absolute owner of such Stated Amount of Securities regardless of any notice of ownership, theft or loss, or of any trust or other interest therein or of any writing thereon (and the expression **"Security Holder"** and references to **"holding of Securities"** and to **"Holder of Securities"** shall be construed accordingly).

### 1.5. *Transfers*

If a Security is transferred, the transferor of the relevant Security will promptly surrender the relevant Certificate at the registered office of the Registrar. Where not all the Securities represented by the surrendered Certificate are the subject of the transfer, a new Certificate in respect of the balance of the Securities will be issued to the transferor.

### 1.6. *Registration and Delivery of Certificates*

Within five Business Days of the surrender of a Certificate in accordance with paragraph 1.5 (*Transfers*) above, the Registrar will deliver a new Certificate of a like principal amount to the Securities transferred to each relevant holder at its registered office or (at the request and risk of any such relevant holder) by uninsured first class mail (airmail if overseas) to the address specified for such purpose by such relevant holder.

## 2. **Status, Ranking and Priority**

### 2.1. *Status and Ranking*

The Securities will constitute direct, unsecured, unconditional and subordinated obligations of the Issuer, and will rank *pari passu* and rateably without any preference among themselves for all purposes. The Securities will rank, as to payment in respect of amounts due upon the Securities, junior to all present and future secured obligations of the Issuer (the **"Senior Secured Obligations"**) and to all other present and future unsecured obligations of the Issuer (the **"Senior Unsecured Obligations"** and together with the Senior Secured Obligations, the **"Senior Obligations"**).

### 2.2. *Priority of Payments*

### 2.2.1. *Priority of Payments*

Prior to the occurrence of an Event of Default (as defined in Condition 10 below), all moneys received by (or on behalf of) the Issuer in respect of the Securities, shall be applied in the following order of priority:

- (1) first, in or towards payment of all fees and other remuneration of and all costs, charges, expenses and Liabilities incurred by the Trustee;
- (2) secondly, in or towards payment *pari passu* and rateably of all fees and other remuneration of and all costs, charges, expenses and Liabilities incurred by the Agents;
- (3) thirdly, in or towards payment, *pari passu* and rateably, of (i) any fees, taxes, costs and expenses properly incurred by the Issuer in connection with the carrying out of its business (other than expenses reimbursed to the Issuer under any of the Transaction Documents); including, in particular, the fees and expenses of the directors of the Issuer and any costs relating to any indemnity insurance provided (to the extent permitted by law) to the directors of the Issuer; (ii) any fees, costs and expenses (the “**Litigation Expenses**”) properly incurred by the Issuer to defend any claim brought against it in connection with the carrying out of its business provided that the incurring of any such Litigation Expenses has been agreed in advance by the Portfolio Manager in writing; (iii) all registered office fees, legal fees, audit fees, accounting fees and tax amounts payable by the Issuer for the period from the date hereof until the Issuer is dissolved and its name removed from the Register of Companies of Ireland; and (iv) all annual return fees in Ireland from the date hereof until the Issuer is dissolved and its name removed from the Register of Companies of Ireland;
- (4) fourthly, up until 14 February 2014 in or towards the acquisition of Portfolio Assets;
- (5) fifthly, in or towards payment *pari passu* and rateably of all arrears of Periodic Return Payments remaining unpaid in respect of the Securities and all Paid-Up Amounts or due on or in respect of the Securities; and
- (6) sixthly, the balance (if any) in payment to the Issuer.

### 2.2.2. *Post-Event of Default Priority of Payments*

Following the occurrence of an Event of Default, all moneys received by the Trustee in respect of the Securities or amounts payable under the Trust Deed will despite any appropriation of all or part of them by the Issuer (including any moneys which represent Paid-Up Amounts or Periodic Return Payments in respect of Securities which have become void under the Conditions) be held by the Trustee on trust to apply them in the following order of priority:

- (1) first, in or towards payment of all fees and other remuneration of and all costs, charges, expenses and Liabilities incurred by the Trustee;
- (2) secondly, in or towards payment *pari passu* and rateably of all fees and other remuneration of and all costs, charges, expenses and Liabilities incurred by the Agents;

- (3) thirdly, in or towards payment, *pari passu* and rateably, of (i) any fees, taxes, costs and expenses properly incurred by the Issuer in connection with the carrying out of its business (other than expenses reimbursed to the Issuer under any of the Transaction Documents); including, in particular, the fees and expenses of the directors of the Issuer and any costs relating to any indemnity insurance provided (to the extent permitted by law) to the directors of the Issuer; (ii) any Litigation Expenses properly incurred by the Issuer to defend any claim brought against it in connection with the carrying out of its business provided that the incurring of any such Litigation Expenses has been agreed in advance by the Portfolio Manager in writing; (iii) all registered office fees, legal fees, audit fees, accounting fees and tax amounts payable by the Issuer for the period from the date hereof until the Issuer is dissolved and its name removed from the Register of Companies of Ireland; and (iv) all annual return fees in Ireland from the date hereof until the Issuer is dissolved and its name removed from the Register of Companies of Ireland;
- (4) fourthly, in or towards payment *pari passu* and rateably of all arrears of Periodic Return Payments remaining unpaid in respect of the Securities and all Paid-Up Amounts or due on or in respect of the Securities; and
- (5) fifthly, the balance (if any) in payment to the Issuer.

### 3. Covenants

So long as any Security remains outstanding (as defined in the Trust Deed), save with the prior written consent of the Trustee or upon the express written direction of the holders of all outstanding Securities (a “**Written Direction**”) and subject as provided in, or contemplated by, any of the Transaction Documents, the Issuer will not:

- (i) carry on any business other than the acquisition, origination, disposal, owning, holding and management of “qualifying assets” as described in s.110 of the Irish Taxes Consolidation Act 1997 (as amended) and shall not engage in any activity or do anything whatsoever in connection with that business except:
  - (1) funding the acquisition of Portfolio Assets by various means including, *inter alia*, the issue of securities pursuant to Condition 14 and the borrowing of monies;
  - (2) entering into other related arrangements including, *inter alia*, repurchase agreements;
  - (3) owning and exercising its rights in respect of the Portfolio and its interests therein and performing its obligations in respect of the Portfolio;
  - (4) preserving and/or exercising and/or enforcing any of its rights and performing and observing its obligations under the Transaction Documents, including in respect of the granting of indemnities to any person;
  - (5) paying dividends or making other distributions to its shareholders out of profits available for distribution in the manner permitted by applicable law and, *inter alia*, to make claims, payments and surrenders in respect of certain tax reliefs;
  - (6) performing any act necessary in connection with 3.(i)(1) to 3.(i)(5) above in accordance with applicable laws and in accordance with the Memorandum

and Articles of Association;

- (ii) incur or permit to exist any indebtedness in respect of borrowed money whatsoever or give any guarantee or indemnity in respect of any indebtedness or any obligation of any person (other than in connection with any of the matters contemplated in (i) above);
- (iii) consolidate or merge with any other person or convey or transfer substantially the whole of its properties, undertaking or assets to any person;
- (iv) permit the validity or effectiveness of the Trust Deed to be amended, terminated, postponed or discharged, or consent to any variation of or exercise any powers of consent or waiver pursuant to the terms of the Trust Deed or permit any party or any other person whose obligations form part of the Portfolio to be released from such obligations except in accordance with the Transaction Documents or as described herein;
- (v) amend, supplement or otherwise modify its Memorandum and Articles of Association (other than to correct a manifest error), or
- (vi) create or permit to subsist any mortgage, sub-mortgage, security assignment, charge, pledge, lien (unless arising by operation of law), hypothecation, or other security interest whatsoever over the Securities.

In giving any consent in the foregoing, the Trustee shall act in accordance with any Written Direction which may require the Issuer to make such modifications or additions to the provisions of any of the Transaction Documents or may impose any other conditions or requirements.

**“Portfolio Assets”** means those financial or other investments or instruments that the Issuer purchases or originates from time to time (which will always constitute “qualifying assets” as described in s.110 of the Irish Taxes Consolidation Act 1997 (as amended)).

#### 4. **Periodic Return Payments**

- 4.1 The return on a Security in respect of any Accrual Period (the **“Periodic Return”**) will be the relevant proportion (being the proportion that the Paid-Up Amount of such Security bears to the aggregate Paid-Up Amount of all outstanding Securities (the **“Relevant Proportion”**)) of an amount equal to the greater of (a) all income and gains (realised or unrealised) recognised in the Income Statement of the Issuer as adopted for tax purposes in respect of the assets and liabilities and related arrangements of the Issuer, less (i) any losses (realised or unrealised) recognised in the Income Statement of the Issuer, for the Accrual Period, (ii) the sum of all operating expenses and costs (other than the accrual of Periodic Return) of the Issuer accrued and recognised in the Income Statement in that Accrual Period, (iii) any cumulative retained losses brought forward from the prior Accrual Period and (iv) the Hold Back Amount for that Accrual Period; or (b) Zero.

The calculation of the Periodic Return must be performed at least once per Accrual Period as at December 31. The Issuer may (or the Portfolio Manager on its behalf), in the Issuer’s sole discretion, calculate the Periodic Return at any point in time during the course of an Accrual Period in addition to the calculation performed as at December 31.

The Issuer may, at its sole discretion, make the Periodic Return Payment due by way of (a) cash or (b) Payment In Kind. Payment In Kind includes reinvestment of whole or part of the Periodic Return Payment due on the Security by way of additional Paid-Up Amount in respect of such Security. There shall be no obligation with respect to

the Periodic Return Payment in any Accrual Period in which there is no income recognised in the Income Statement of the Issuer.

A payment of the Periodic Return (a “**Periodic Return Payment**”), if any, will be due and payable on 1 September of each year (each a “**Periodic Return Payment Date**”) with respect to the Financial Year (the “**Accrual Period**”) immediately preceding the Financial Year in which the Periodic Return Payment Date falls. The payment of the Periodic Return can be made prior to 1 September in each year provided that the Issuer notifies recipients of such payment no less than 14 days prior to payment date. The first Periodic Return Payment will be due and payable 1 September 2013 with respect to the financial period beginning with the date of incorporation of the Issuer and ending 31 December 2012. The Periodic Return Payment, due and payable, shall be an amount equal to the Periodic Return (as calculated above) less any amounts of Estimated Periodic Return Payments (as defined in Condition 4.2 below) made during the Accrual Period that are not classified as Periodic Return Excess (as defined in Condition 4.2 below).

IF, IN RESPECT OF ANY ACCRUAL PERIOD, THE AMOUNT OF THE PERIODIC RETURN IS ZERO OR A NEGATIVE NUMBER THE ISSUER WILL NOT HAVE AN OBLIGATION TO MAKE A PERIODIC RETURN PAYMENT IN RESPECT OF THAT ACCRUAL PERIOD.

The Periodic Return Payment will be regarded as accruing throughout the Accrual Period.

The Portfolio Manager will determine, or procure to be determined, the amount of any Periodic Return, whether a Periodic Return Payment is due and payable, and the amount thereof, promptly following the end of the relevant Accrual Period and will notify the Trustee, the Paying Agent, the Registrar and the Security Holders in accordance with Condition 15 of the results of such determination promptly thereafter and, in any event, prior to the relevant Periodic Return Payment Date. If the Issuer or a Security Holder wishes to dispute such determination, an internationally recognised firm of accountants (acting as experts not arbitrators) will be appointed by the Issuer to determine the amount of the relevant Periodic Return Payment.

If the Portfolio Manager does not determine the amount of any Periodic Return Payment prior to the relevant Periodic Return Payment Date, the Issuer will appoint an internationally recognised firm of accountants (acting as experts not arbitrators) to carry out such determination and such determination shall be deemed to have been made by the Portfolio Manager and shall be binding on the Security Holders, the Trustee, the Paying Agent and the Issuer. In doing so, the person appointed by the Issuer shall apply the foregoing provisions of this Condition.

- 4.2 At any time during an Accrual Period, the Portfolio Manager may (to the extent that the Issuer has sufficient available cash funds): (i) estimate the amount of the Periodic Return which will be payable at the end of the Accrual Period (the “**Estimated Periodic Return Payment**”); and (ii) procure that an amount equal to the Estimated Periodic Return Payment be prepaid, but subject to such Estimated Periodic Return Payment not exceeding the Paid Up Amount in respect of that Security at the date of pre-payment. At the end of the relevant Accrual Period, the Portfolio Manager will then calculate the actual Periodic Return Payment for the Accrual Period, and if it is determined that the amount of the Estimated Periodic Return Payment exceeded the actual Periodic Return Payment, the Portfolio Manager shall procure that the excess (the “**Periodic Return Excess**”) be applied in repaying the Paid-Up Amount in respect of that Security in accordance with Condition 1.2 and shall procure that the Registrar amends accordingly the amount of Paid-Up Amount recorded in the Register.

- 4.3 A Security Holder may on any Periodic Return Payment Date invest the whole or any part of the amount of Periodic Return Payment due on the Security by way of additional Paid-Up Amount in respect of such Security ("**Periodic Return Reinvestment Amount**") in accordance with Condition 1.2 (as long as the Paid-Up Amount does not exceed the Stated Amount as a result) and shall procure that the Registrar amends accordingly the amount of Paid-Up Amount recorded in the Register.

For the purposes of this Condition 4 the following terms have the corresponding definitions:

"**Financial Year**" means the financial year of the Issuer ending 31 December; and

"**Hold Back Amount**" means, with respect to any Accrual Period, the greater of (a) 2 per cent of the net profit as recognised under the Income Statement of the Issuer as adopted for tax purposes before the accrual of the Periodic Return or (b) Zero.

References to assets, liabilities, operating expenses, costs, income, gains and losses and references to accrual or accrued shall be calculated in accordance with Irish tax law.

## 5. **Redemption and Purchase**

### 5.1. *Final redemption*

Unless purchased and cancelled or previously redeemed, each Security will be redeemed on 1 September 2018 (the "**Maturity Date**") in an amount equal to the Paid-Up Amount together with any Periodic Return Payment due (determined as set out in Condition 5.3 below) in respect of such Security (together, the "**Redemption Amount**") provided, however, that, if the assets of the Issuer represented by the Portfolio and the balance standing to the credit of the Transaction Account (the "**Recourse Assets**") on such date, after the deduction of any Winding Up Reserve (as defined in Condition 5.2 below) (the "**Net Recourse Assets**") are less than the aggregate of all Redemption Amounts, the Redemption Amount shall be deemed reduced to an amount equal to the Relevant Proportion of such amount of Net Recourse Assets and any claims of Security Holders otherwise outstanding shall be extinguished.

### 5.2. *Winding Up Reserve*

Costs and expenses of a voluntary winding up of the Issuer following a redemption in full of the Securities will be paid out of the balance standing to the credit of the Issuer Account at such time. If, at the time of such voluntary winding up, the directors of the Issuer are of the reasonable opinion that such costs and expenses would exceed the balance standing to the credit of the Issuer Account at such time, the lesser of an amount sufficient to cover such excess or €25,000 (the "**Winding Up Reserve**") shall be deducted from the proceeds of the Recourse Assets and transferred to the Issuer Account.

### 5.3. *Optional Redemption*

The Issuer may at its option, having given not less than 1 nor more than 30 days' notice to the Trustee, the Paying Agent and the Security Holders in accordance with Condition 15 (which notice shall be irrevocable), redeem such Securities as it may elect and specify in such notice, in its absolute discretion, at any time. The price at which such Security elected by the Issuer shall be redeemed shall be the Paid-Up Amount of such Security together with any Periodic Return Payment due (determined as if reference in Condition 4 to "Accrual Period" is reference to the period beginning on the day following the last day of the preceding Accrual Period or, with respect to the first Accrual Period, the date of incorporation of the Issuer, and ending on the day falling 30 days prior to the date fixed for

redemption of such Security).

#### 5.4. *Purchase*

The Issuer may at any time purchase Securities in the open market or otherwise at any price.

#### 5.5. *Cancellation*

All Securities redeemed or purchased pursuant to Condition 5.4 will be cancelled and may not be re-issued or resold. Securities redeemed or purchased pursuant to Condition 5.3 either be cancelled or re-issued at a later date.

#### 5.6. *Other Redemption*

The Securities may not be redeemed at the option of the Issuer other than in accordance with this Condition 5.

### 6. **Payments**

#### 6.1. *Method of Payment*

Payments in respect of Securities will (subject as provided below) be made by the Paying Agent by transfer to an account maintained by the payee with a bank in a city which has access to the Trans-European Automated Real Time Gross Settlement Express Transfer (“**TARGET**”) System to the Security Holders as recorded in the Register on the relevant Periodic Return Payment Date or the Maturity Date.

The Paying Agent shall promptly notify the Issuer, the Trustee, the Portfolio Manager and the Registrar of each payment made on the Securities and the Paying Agent shall procure that there is noted in the Register and the schedule to the Certificates the amount of such payments (distinguishing between any payments of Paid-Up Amounts or Periodic Return Payments).

#### 6.2. *Payments subject to fiscal laws*

All payments are subject in all cases to any applicable fiscal or other laws and regulations. No commissions or expenses shall be charged to the Security Holders in respect of such payments.

#### 6.3. *Payments on Business Days*

Payments in respect of the Securities will only be made on a day which is a Business Day. In this Condition “**Business Day**” means a day on which commercial banks and foreign exchange markets are open in London and Dublin and which is a day on which the TARGET System is operating.

#### 6.4. *Currency of Payment*

- (i) Sums payable by the Issuer on the Securities including, but not limited to, the Periodic Return Payment, the Redemption Amount or any other payments in connection with the Securities shall be paid on the relevant Periodic Return Payment Date or the Maturity Date, either (i) in euro (the “**Base Currency**”), or (ii) in such other currencies (the “**Alternative Currencies**”) as determined by the Issuer (or the Portfolio Manager on behalf of the Issuer);
- (ii) In circumstances where the Issuer (or the Portfolio Manager on behalf of the Issuer) wishes to make payments in respect of the Securities in an Alternative Currency, then the Portfolio Manager will calculate the amount in the Alternative

Currency equal to the euro amount due and payable, using the Account Bank's spot rate (the "**Spot Rate**") of the exchange for the purchase of the relevant Alternative Currency with the Base Currency in the New York foreign exchange market at or about 11.00 a.m. on the Business Day immediately preceding the Business Day upon which the relevant payment is due and payable.

#### 6.5. *Publication of Amounts*

The Portfolio Manager will cause details as to the amounts of interest and principal to be paid in respect of the Securities to be notified at the expense of the Issuer to the Issuer, the Trustee, the Paying Agent, the Registrar and the Irish Stock Exchange by no later than 11.00 a.m. (London time) on the third Business Day following the date of determination thereof and the Portfolio Manager shall procure that the details of such amounts are notified at the expense of the Issuer to the Security Holders within the Quarterly Report.

#### 7. **Paying Agent**

The initial Paying Agent and its initial specified offices are listed below. The Issuer reserves the right at any time to vary or terminate the appointment of any Paying Agent and appoint additional or other Paying Agents.

The Bank of New York Mellon (the "**Paying Agent**") acting through its London Branch, whose specified office is at One Canada Square, London E14 5AL, United Kingdom.

#### 8. **Capital Call**

The Issuer may from time to time elect that each, but not some only, of the Security Holders be required to pay the Issuer, with respect to its Securities, an amount not exceeding the Stated Amount of such Securities less the Paid-Up Amount, from time to time, provided that the proportion that such amount bears to the aggregate amount required of all Security Holders at such time shall be the same as the proportion that the Paid-Up Amount on such Security Holder's Securities bears to the aggregate Paid-Up Amount on all Securities (a "**Capital Amount**"). The Issuer may make this election on more than one occasion and a minimum amount of EUR200,000 provided that, upon such election, the sum of the Paid-Up Amount with respect to all Securities outstanding and the proposed Capital Amount does not exceed the aggregate Stated Amount of the Securities outstanding. The Issuer, upon making such election, shall notify the Trustee, the Paying Agent and the Security Holders in accordance with Condition 15 (a "**Capital Call Notice**") of a date not falling more than 30 days or less than 1 day following the service of such notice (the "**Capital Call Date**") on which date each Security Holder is required to pay to the Paying Agent for the account of the Issuer, at the account maintained by the Paying Agent with a bank in Ireland which has access to the TARGET System, the Capital Amount with respect to its Securities. The Capital Call Notice shall specify the Capital Amount with respect to each Security outstanding and the details of the account of the Paying Agent. Upon payment of a Capital Amount, the Paying Agent will notify the Registrar of the amount paid in respect thereof and the Registrar will record such amount in the Register. From the time such record is made, such amount shall be taken into account when determining the "Paid-Up Amount" for the purposes of Condition 5.1.

#### 9. **Taxation**

All payments of Paid-Up Amount and Periodic Return Payments in respect of the Securities shall be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed unless such withholding or deduction is required by law. In that event the Issuer shall not be under an obligation to pay any additional amounts with respect thereto.



## 10. **Events of Default**

If any of the following events occur and are continuing:

(a) *Non-Payment*

the Issuer fails to pay the required amount on the Maturity Date or the Periodic Return Payment on the due date and such failure continues for a period of five days; or

(b) *Breach of Other Obligations*

the Issuer does not perform or comply with any one or more of its other material obligations under the Securities which default is incapable of remedy or is not remedied within 30 days after notice of such default shall have been given to the Issuer by the Trustee at its specified office; or

(c) *Enforcement Proceedings*

a distress, attachment, execution or other legal process is levied, enforced or sued out on or against any part of the property, assets or revenues of the Issuer and is not discharged or stayed within 30 days; or

(d) *Security Enforced*

any mortgage, charge, pledge, lien or other encumbrance, present or future, created or assumed by the Issuer becomes enforceable and any step is taken to enforce it (including the taking of possession or the appointment of a receiver, or other similar person); or

(e) *Insolvency*

the Issuer is deemed by law or a court or admits itself to be insolvent or bankrupt or unable to pay its debts as they fall due, stops, suspends or threatens to stop or suspend payment of all or a material part of its debts, proposes or makes any agreement for the deferral, rescheduling or other readjustment of all of its debts (or of any part which it will or might otherwise be unable to pay when due), proposes or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors in respect of any of such debts or a moratorium is agreed or declared in respect of or affecting all or any part of (or of a particular type of) the debts of the Issuer; or

(f) *Winding-up*

an order or petition is made or an effective resolution passed for the winding-up, examination or dissolution of the Issuer, or the Issuer ceases or threatens to cease to carry on all or a material part of its business or operations, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by a Written Direction; or

(g) *Authorisation and Consents*

any action, condition or thing (including the obtaining or effecting of any necessary consent, approval, authorisation, exemption, filing, licence, order, recording or registration) at any time required to be taken, fulfilled or done in order (i) to enable the Issuer lawfully to enter into, exercise its respective rights and perform and comply with its obligations under the Securities, (ii) to ensure that those obligations are legally binding and enforceable and (iii) to make the Securities admissible in

evidence in the courts of Ireland is not taken, fulfilled or done; or

(h) **Illegality**

it is or will become unlawful for the Issuer to perform or comply with any one or more of its material obligations under any of the Securities;

(each, an “**Event of Default**”);

then each Security shall, by notice in writing given to the Issuer by the Trustee pursuant to a Written Direction at its specified office by the holder, be declared immediately due and payable whereupon it shall become immediately due and payable in accordance with Condition 2.2.2 (*Post-Event of Default Priority of Payments*) at its Paid-Up Amount together with any Periodic Return Payment provided however that, if the net assets of the Issuer on such date are less than the Paid-Up Amount and such Periodic Return Payments, the Paid-Up Amount and such Periodic Return Payments shall in aggregate be deemed reduced to an amount equal to the Relevant Proportion of such amount of net assets and any claims of Security Holders otherwise outstanding shall be extinguished (determined as if reference in Condition 4 to “Accrual Period” shall be deemed to be reference to the period beginning on the day following the last day of the preceding Accrual Period or, with respect to the first Accrual Period, the date of incorporation of the Issuer, and ending on the day falling 30 days prior to the Security being declared immediately due and payable).

**11. Prescription**

Claims in respect of Paid-Up Amounts and Periodic Return Payments will become void unless made within a period of 10 years in the case of Paid-Up Amounts and 5 years in the case of Periodic Return Payments from the appropriate relevant date.

**12. Replacement of Securities**

If any Security is lost, stolen, mutilated, defaced or destroyed it may be replaced at the specified office of the Paying Agent subject to all applicable laws and stock exchange requirements, upon payment by the claimant of the expenses incurred in connection with such replacement and on such terms as to evidence, security, indemnity and otherwise as the Issuer and/or the Registrar may require (provided that the requirement is reasonable in the light of prevailing market practice). Mutilated or defaced Securities must be surrendered before replacements will be issued.

**13. Written Directions and Modification**

The Trust Deed contains provisions relating to Written Directions with respect to matters affecting the interests of the Security Holders, including the sanctioning of a modification of any of these Conditions. A Written Direction shall be binding on the Security Holders. The Trustee shall, if so instructed by a Written Direction, agree to any modification of these Conditions or the Trust Deed. In addition, the Trustee shall, if so instructed by a Written Direction, authorise or waive any breach or proposed breach of the Securities or the Transaction Documents, or determine that any event which would or might otherwise give rise to a right of acceleration under the Conditions shall not be treated as such.

**14. Further Issues**

The Issuer may from time to time without the consent of the Security Holders create and issue further securities either having the same terms and conditions as the Securities in all respects (or in all respects except for the first Periodic Return Payment on them) and so that such further issue shall be consolidated and form a single series with the outstanding securities of any series (including the Securities) or upon such terms as the Issuer may determine at the time of their issue. References in these Conditions to the Securities include

(unless the context requires otherwise) any other securities issued pursuant to this Condition and forming a single series with the Securities.

**15. Notices**

A Security Holder may notify the Issuer that it has an interest in the Securities and of its mailing address and facsimile number. Notices to Security Holders will be valid and deemed to have been made to all Security Holders if sent by mail or by facsimile communication to those persons that have so notified the Issuer at the mailing address or facsimile number last received. Any such notice shall be deemed to have been given on the date of mailing by the Issuer or on the date of receipt by the Issuer of a facsimile confirmation, as the case may be. Notices to the Trustee, the Paying Agent and the Portfolio Manager will be valid and deemed to have been made if sent in accordance with the provisions of the Trust Deed and the Agency Agreement.

**16. Enforcement**

The Trustee shall take such proceedings against the Issuer as it may think fit to enforce repayment of the Securities and the provisions of these Conditions and the Trust Deed as instructed pursuant to a Written Direction, but it shall not be bound to take any such proceedings unless it shall have been indemnified and/or secured to its satisfaction. No Security Holder shall be entitled to proceed directly against the Issuer unless the Trustee, having become bound so to proceed, fails to do so within a reasonable period and such failure shall be continuing.

**17. Trustee and Paying Agent**

Under the Trust Deed, the Trustee is entitled to be indemnified and/or secured and/or prefunded and relieved from responsibility in certain circumstances and to be paid its costs, remuneration, expenses and liabilities in priority to the claims of the Security Holders. In addition, the Trustee is entitled to enter into business transactions with the Issuer and any entity relating to the Issuer without accounting for any profit. The Trust Deed contains provisions permitting the retirement, or the removal by the Security Holders (exercisable by Written Direction), of the Trustee subject to there remaining a trustee in office after such retirement or removal.

In connection with the exercise by it of any of its trusts, powers, authorities and discretions (including, without limitation, any modification, waiver, authorisation, determination or substitution), the Trustee shall have regard to the general interests of the Security Holders as a class but shall not have regard to any interests arising from circumstances particular to individual Security Holders (whatever their number) and, in particular but without limitation, shall not have regard to the consequences of any such exercise for individual Security Holders (whatever their number) resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory or any political sub-division thereof and the Trustee shall not be entitled to require, nor shall any Security Holders be entitled to claim, from the Issuer, the Trustee or any other person any indemnification or payment in respect of any tax consequence of any such exercise upon individual Security Holders.

In acting under the Agency Agreement and in connection with the Securities, the Agents act solely as agents of the Issuer and (to the extent provided therein) the Trustee and do not assume any obligations towards or relationship of agency or trust for or with any of the Security Holders. The Agents are entitled to be indemnified and/or secured and relieved from certain responsibility in certain circumstances as set out in the Agency Agreement.

The Issuer reserves the right (with the prior approval of the Trustee acting pursuant to a Written Direction) at any time to vary or terminate the appointment of any Agent and to appoint a successor Agent or additional or successor other Agents. Notice of any change in

any of the Agent or in their Specified Offices shall promptly be given to the Security Holders.

**18. Governing Law**

**(a) Governing Law**

The Trust Deed and the Securities are governed by and shall be construed in accordance with Irish law.

**(b) Jurisdiction**

The courts of Ireland are to have jurisdiction to settle any disputes which may arise out of or in connection with the Securities and accordingly any legal action or proceedings arising out of or in connection with the Securities ("**Proceedings**") may be brought in such courts. The Issuer irrevocably submits to the jurisdiction of such courts and waives any objection to Proceedings in any such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum. These submissions are made for the benefit of the Security Holders and the Trustee and shall not limit the right of any of them to take Proceedings 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).

**19. Limited Recourse and Non Petition**

The Security Holders will have recourse only to the Net Recourse Assets. The obligation of the Issuer to make payments in respect of the Securities will be limited to such amounts received in respect of the Net Recourse Assets, after payment of all Senior Obligations, and the Security Holders will have no further recourse to the Issuer in respect of its payment obligation under the Securities. Once the proceeds of the Net Recourse Assets have been distributed to the creditors of the Issuer (including the Security Holders) in accordance with Condition 2.2.2 (*Post-Event of Default Priority of Payments*), neither the Security Holders nor anyone acting on their behalf may take any further steps against the Issuer or its directors, officers or members to recover any further sum, no debt will be owed by the Issuer in respect of such sum and all claims of the Security Holders will be extinguished.

At any time prior to two years and one day (or, if longer, such other preference period under applicable law plus one day) after the date on which all obligations of the Issuer under the Securities (including any additional or further Securities issued) are discharged in full, the Security Holders (nor any other person acting on their behalf) shall not be entitled to:

- (i) institute against the Issuer, or join in any institution against the Issuer of, any bankruptcy, reorganisation, examination, arrangement, insolvency, winding-up or liquidation proceedings or other proceedings under any applicable bankruptcy or similar law in connection with any obligations of the Issuer relating to the Securities or otherwise; or
- (ii) have any claim arising in respect of the share capital of the Issuer.

## USE OF PROCEEDS

The initial net proceeds from the issuance of the Securities were EUR 0.00 as the Securities were issued unpaid on the Closing Date.

It is expected that the Issuer will raise up to EUR 100,000,000 in aggregate from time to time following issuance of the Securities provided that the Security Holders comply with any request by the Issuer for payment of a Capital Amount in accordance with Condition 8 (the “**Deferred Proceeds**”). Such Deferred Proceeds will be credited to an Account. Amounts standing to the credit of such Account will be withdrawn, in whole or part, by the Issuer and used, inter alia, to purchase Portfolio Assets and to meet the costs and expenses of the Issuer from time to time (see “The Portfolio - Description of the Portfolio Assets” and “The Portfolio – Account”).

## THE ISSUER

The Issuer is a private company incorporated under the Irish Companies Acts, 1963 to 2009 on 7 December 2011 with registered number 507038. The registered office of the Issuer is 4<sup>th</sup> Floor, Hanover Building, Windmill Lane, Dublin 2, Ireland and its telephone number is + 353 1 900 6999. The Issuer is registered and domiciled in Ireland. The Issuer has been established as a special purpose vehicle for the purpose of issuing asset backed securities.

The principal objects of the Issuer are set out in Clause 2 of its Memorandum of Association and permit, inter alia, the issuance of the Securities, entering into of the Transaction Documents, the purchase and origination of the Portfolio Assets and any and all other activities relating to the transactions described in this Listing Particulars. The Issuer has been established with the intention of acquiring the Portfolio, issuing the Securities and entering into the Transaction Documents.

The Issuer has covenanted to observe certain restrictions on its activities which are detailed in Condition 3 of the Securities while any Security is outstanding, including (but not limited to) covenanting not to:

- (i) carry on any business other than the acquisition, disposal, owning, holding and management of “qualifying assets” as described in s.110 of the Irish Taxes Consolidation Act 1997 or engage in any activity or do anything whatsoever in connection with that business except: (a) funding the acquisition of Portfolio Assets (as defined above); (b) entering into other related arrangements including, *inter alia*, Repurchase Agreements; (c) only exercising its rights in respect of Portfolio and its interests therein and performing its obligations in respect of the Portfolio; (d) preserving and/or exercising and/or enforcing any of its rights in performing and observing its obligations under the Transaction Documents; (e) paying dividends or making other distributions to its shareholders out of profits available for distribution in the manner permitted by applicable law; and (f) performing any act necessary in connection with (a) to (e) above in accordance with applicable law and in accordance with the Memorandum and Articles of Association;
- (ii) incur or permit to exist any indebtedness in respect of borrowed money whatsoever or give any guarantee or indemnity in respect of any indebtedness or any obligation to any person (other than in connection with the matters described in the previous sentence); or
- (iii) consolidate or merge with any other person or convey or transfer substantially the whole of its properties, undertaking or assets to any person, or permit the validity or effectiveness of the Trust Deed to be amended, terminated, postponed or discharged, or amend, supplement or otherwise modify its Memorandum and Articles of Association.

The Issuer currently has no subsidiaries.

Since its date of incorporation, the Issuer has conducted no business other than negotiating and entering into the Transaction Documents.

### Capital Stock and Ownership

The initial authorised share capital of the Issuer was €1,000 divided into (i) 240 shares of €1.00 each (the “**Class A Ordinary Shares**”), and (ii) 760 shares of €1.00 each (the “**Class B Ordinary Shares**”).

120 of the Class A Ordinary Shares are legally and beneficially held by Vista Fund I L.P. and the remaining 120 of the Class A Ordinary Shares are legally and beneficially held by Vista Fund II L.P., The Class B Ordinary Shares are held legally by BNY Mellon Corporate Trustee Services Limited (the “**Share Trustee**”) under the terms of a declaration of trust (the “**Share Trust**”) dated 10 February 2012 under which the Share Trustee holds the benefit of the Class B Ordinary Shares on trust for charitable purposes. The Share Trustee has no beneficial interest in and derives no benefit from its holding of the Class B Ordinary Shares. The Class A Ordinary Shares shall be entitled to 99.9% of the retained profits of the Issuer. The Class A Ordinary Shares and Class B Ordinary Shares shall share proportionately in the remaining 0.1% of the retained profits in accordance with their par value. There are no additional control rights given to the holders of the Class A Ordinary Shares. The rights of the holders of the Class A Ordinary Shares and the rights of the holders of the Class B Ordinary Shares are identical other than in respect to the entitlement to profits.

### Management

At present, the members of the Board of Directors of the Issuer, their positions within the Issuer and their other

principal activities are as follows:

Brian Brady 31 Brighton Avenue Foxrock Dublin 18 Ireland	Director	Professional Director
Gerry Murphy 40 Woodlands Greystones County Wicklow Ireland	Director	Professional Director
Nicholas Weber Chequers Corner Hurst Drive Walton on the Hill Surrey, KT20 7QT United Kingdom	Director	Chief Executive Officer

### **Independent Auditors**

The independent auditors of the Issuer are PricewaterhouseCoopers, an accountancy firm who are chartered accountants qualified to practice in Ireland and members of the Institute of Chartered Accountants in Ireland.

### **Financial Year**

The financial year of the Issuer begins on 1 January of each year and terminates on 31 December of the same year. The first financial year began on the date of incorporation of the Issuer and terminates on 31 December 2012. The Issuer does not prepare interim financial information.

### **Share Capital**

The Issuer has (i) 240 Class A Ordinary Shares of €1.00 each in issue, each of which is fully paid up and in respect of each of which a premium of approximately €8,499.23 will be paid, and (ii) 760 Class B Ordinary Shares of €1.00 each in issue, each of which is fully paid up.

### **Shareholders**

The shareholders of the Issuer are Vista Fund I L.P., Vista Fund II L.P., and the Share Trustee. Vista Fund I L.P. and Vista Fund II L.P. are limited partnerships formed under the laws of Ireland and are affiliates of the Portfolio Manager. The Share Trustee is described above in "Capital Stock and Ownership".

## THE PORTFOLIO MANAGER

The Portfolio Manager is a Delaware limited partnership formed on 7 April 2008. The Portfolio Manager provides certain portfolio management functions to the Issuer pursuant to the Portfolio Management Agreement. The Portfolio Manager also provides portfolio management services to the Funds and may in the future also manage other accounts. Mount Kellett Capital Management GP, LLC, a Delaware limited liability company controlled by Mark McGoldrick and Jason Maynard, serves as the general partner of the Portfolio Manager. The Portfolio Manager and its affiliates have offices in New York, Hong Kong, London and Mumbai.

The Portfolio Manager is led by Mr. McGoldrick and was founded by Mr. McGoldrick and Mr. Maynard with the goal of establishing a leading global multi-strategy investment firm, Messrs. McGoldrick and Maynard have worked together over the last 10 years.

### **Biographies of the Investment Team of the Portfolio Manager**

Set forth below is information regarding the current principals of the investment team of the Portfolio Manager. Such principals may not necessarily continue to be part of the investment team during the entire term of the Portfolio Management Agreement.

#### ***Mark McGoldrick, Global Chief Investment Officer***

Mr. McGoldrick is a co-founder of Mount Kellett and its Global Chief Investment Officer. Mr. McGoldrick is based in New York. Prior to forming Mount Kellett, Mr. McGoldrick was a partner at Goldman Sachs and the co-founder and former co-head of the Global Special Situations Group. In this capacity Mr. McGoldrick was responsible for creating, building-out and investing capital for the Asian Special Situations Group, the European Special Situations Group and the Americas Special Situations Group (collectively, "**GSSG**"). Mr. McGoldrick also ran the Goldman Sachs Whitehall Real Estate Fund in Asia. During his tenure at Goldman Sachs Mr. McGoldrick was a member of the Firmwide Risk Committee, Goldman Sachs Partnership Committee, Asian Management and Operating Committee, European Management and Operating Committee, Fixed Income and Equities Operating Committee, Fixed Income and Equities Executive Committee, various GSSG Investment Committees and the Specialty Lending Group Capital Committee. Mr. McGoldrick is a graduate of Bowdoin College and Columbia University.

#### ***Jason Maynard, Head of Asia***

Mr. Maynard is a co-founder of Mount Kellett, Head of Asia. Mr. Maynard is based in Hong Kong. Mr. Maynard has over 17 years of experience in principal investing with a focus ranging from growth and value-driven equity to distressed companies. Prior to forming Mount Kellett, Mr. Maynard spent over eight years at Goldman Sachs in Hong Kong, where he rose to the position of Partner and co-Head of the Asian Special Situations Group (ex-Japan). Prior to joining Goldman Sachs, Mr. Maynard was a key member of the Asian distressed debt teams of Merrill Lynch and Chase Manhattan as a senior analyst focused largely on industrials regionally. Mr. Maynard is a graduate of Hamilton College.

#### ***Nick Weber, Head of Europe***

Mr. Weber is the Head of Europe. Mr. Weber is based in London. Mr. Weber has over 16 years of experience in principal investing with a focus ranging from distressed corporate and real estate debt and equity, rescue financing and private equity. Prior to joining Mount Kellett, from 1994 to 2008, Mr. Weber served in a variety of positions at Goldman Sachs in New York, Hong Kong and London, where he rose to the position of Partner and Co-Head of the European Special Situations Group. Mr. Weber is a graduate of Princeton University.



## THE PORTFOLIO MANAGEMENT AGREEMENT

The portfolio management functions described herein are subject to the terms of, and are performed by the Portfolio Manager pursuant to authority granted to the Portfolio Manager by the Issuer under the Portfolio Management Agreement. The Portfolio Management Agreement provides that the Portfolio Manager acts on behalf of the Issuer in relation to the composition and management of the Portfolio.

### **Management Fee**

The Issuer will pay the Portfolio Manager an annual management fee (the “**Management Fee**”) payable on each Periodic Return Payment Date in respect of the preceding Financial Year, commencing on the Periodic Return Payment Date in 2012, or such other fees, payable at such times, both as may be agreed in writing between the Portfolio Manager and the Issuer from time to time (subject to the proviso that, in all cases, such fees will be in accordance with arm's length principles as appropriate to circumstances where an issuer receives portfolio management services from its direct or indirect parent).

### **Expenses**

Subject to the following sentence, the Portfolio Manager may, in its discretion, retain the services of professional advisors (including, without limitation, legal counsel, and accountants) to advise it in connection with the performance of its activities on behalf of the Issuer under the Portfolio Management Agreement and the Issuer shall bear full responsibility for any fees and disbursements arising therefrom. The Portfolio Manager shall render the services set forth in clause 3 (*Authority of the Portfolio Manager*) of the Portfolio Management Agreement at its own expense and shall bear all costs and expenses associated with its operations, including without limitation, the salaries of employees necessary for such services, except as specifically assumed by the Issuer under the Portfolio Management Agreement.

### **Termination and Resignation**

**Automatic Termination.** The Portfolio Management Agreement shall be automatically terminated in the event of (a) the repayment in full of all amounts owing under or in respect of the Securities and all other amounts owing to the Security Holders and the termination of the Trust Deed in accordance with its terms; and (b) the liquidation of the Portfolio and the final distribution of the proceeds of such liquidation as provided in the Trust Deed.

**Removal without Cause.** Under the Portfolio Management Agreement, the Portfolio Manager may be removed without cause upon 90 days' prior written notice by the holders of at least 75 per cent. in aggregate Stated Amount of the Securities (for the purposes of making any such determination, Securities owned by the Portfolio Manager, any Affiliate thereof or any fund managed by the Portfolio Manager shall be included). Such termination rights are subject to the proviso that no such termination shall take effect until a replacement Portfolio Manager is appointed.

**Removal with Cause.** In addition, the Portfolio Manager may be removed for “cause” upon 30 days' prior written notice by the holders of at least 75 per cent. in Stated Amount of the Securities (for the purposes of making any such determination, Securities owned by the Portfolio Manager, any Affiliate thereof or any fund managed by the Portfolio Manager shall be included). Such termination rights are subject to the proviso that no such termination shall take effect until a replacement Portfolio Manager is appointed.

For the purposes of the Portfolio Management Agreement, “cause” in relation to the Portfolio Manager shall mean any one of the following events (unless waived by at least 75 per cent. in Stated Amount of the Securities (for the purposes of making any such determination, Securities owned by the Portfolio Manager, any Affiliate thereof or any fund managed by the Portfolio Manager shall be included)):

- (i) a failure by the Portfolio Manager to make any payment of an obligation of the Portfolio Manager when due under the Portfolio Management Agreement if such failure is not remedied within 90 days of receiving written notice;
- (ii) a failure by the Portfolio Manager to comply with or perform any other material agreement or obligation of the Portfolio Manager under the Portfolio Management Agreement (other than under (a) above) if such failure (i) has a material adverse effect on the Security Holders and (ii) is not remedied within 30

days of receiving written notice;

- (iii) a material misrepresentation that has a material adverse effect on the Security Holders;
- (iv) certain events of bankruptcy;
- (v) a change in law making it unlawful for the Portfolio Manager to perform any obligation under the Portfolio Management Agreement;
- (vi) any action taken by the Portfolio Manager that constitutes fraud or criminal activity in the performance of its obligations under the Portfolio Management Agreement or its portfolio management services; and
- (vii) a payment default on the Securities which is caused by a breach by the Portfolio Manager of its duties under the Portfolio Management Agreement which breach is not cured within 90 days of such payment default.

**Resignation.** The Portfolio Manager may resign upon 30 days' written notice to the Issuer or upon 10 days written notice with cause.

**Replacement Portfolio Manager.** No termination or resignation shall be effective unless an Eligible Successor has agreed to assume all the duties and obligations of the Portfolio Manager arising out of the Portfolio Management Agreement in accordance with the terms and conditions of the Portfolio Management Agreement.

An "**Eligible Successor**" means an established institution that in the reasonable opinion of the Issuer or, subject as provided below (i) has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Portfolio Manager and with a substantially similar (or better) level of expertise, (ii) is legally qualified and has the capacity to act as Portfolio Manager, as successor to the Portfolio Manager in the assumption of all of the responsibilities, duties and obligations of the Portfolio Manager, (iii) will perform its duties as Portfolio Manager without causing adverse tax consequences to the Issuer or any holder of the Securities, (iv) has regulatory capacity to conduct its securities business with Irish Residents, (v) such appointment has been notified to the Security Holders in accordance with Condition 15 (*Notices*). In accordance with the terms and conditions of the Portfolio Management Agreement, within 90 days of the receipt of such notice, the holders of a majority in Stated Amount of the Securities may select an Eligible Successor to be appointed as the replacement Portfolio Manager.

### **Assignment**

The Portfolio Manager may not assign its rights or responsibilities under the Portfolio Management Agreement without the written consent of the Issuer and the holders of a majority in aggregate Stated Amount of the Securities; provided, however, that the Portfolio Manager may, in its sole discretion, assign or novate (as applicable) its rights and obligations under the Portfolio Management Agreement and the Trust Deed, to any of its Affiliates, provided such Affiliate (A) has the ability to professionally and competently perform duties similar to those imposed upon the Portfolio Manager under the Portfolio Management Agreement and the Trust Deed, (B) is legally qualified and has the capacity to act as Portfolio Manager under the Portfolio Management Agreement.

In addition, the Portfolio Manager may employ other persons selected by it with reasonable care and due diligence to render advice (including investment advice) and assistance to the Issuer and to perform any of its duties under the Portfolio Management Agreement in accordance with the terms of the Portfolio Management Agreement; provided, however, that the Portfolio Manager will not be relieved of any of its duties under the Portfolio Management Agreement regardless of the performance of any services by such persons.

### **Liability of the Portfolio Manager**

The Portfolio Manager, its Affiliates and their respective partners, members, shareholders, managers, directors, officers, agents and employees (each an "**Indemnified Party**") shall not be liable to the Issuer, the Trustee or the holders of the Securities or any other person for any expenses, losses, damages, liabilities, demands, charges and claims of any nature whatsoever (including reasonable attorneys' fees and expenses) (collectively, "**Losses**") incurred as a result of the actions taken or recommended, or for any acts or omissions, by the Portfolio Manager, its partners, members, shareholders, managers, directors, officers, agents or employees under or in connection with the Portfolio Management Agreement or the terms of the Trust Deed or any other related agreement applicable to it, or for any decrease in the value of the Portfolio, provided that the foregoing exculpations shall not apply to an Indemnified Party where such losses were found by final determination of a

court or government body of competent jurisdiction not subject to appeal to have resulted from such Indemnified Party's fraud, material violation of U.S. securities laws, commission of a felony, material breach of the Portfolio Management Agreement, bad faith, wilful misconduct or gross negligence (as interpreted under the laws of the State of Delaware, USA).

Pursuant to the terms of the Portfolio Management Agreement, the Issuer indemnifies and hold harmless each Indemnified Party from and against any and all Losses as incurred, in respect of or arising from the issuance of the Securities, the transactions described in this Listing Particulars, the Trust Deed or the Portfolio Management Agreement, any action, failure to act or omissions by any Indemnified Party, and any and all Losses arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative and whether before any court, arbitrator, governmental body or other agency, actual or threatened, in which such Indemnified Party may be involved or to which it may be subject, as a party or otherwise, by reason of such Indemnified Party's service to or on behalf of the Issuer or the management of the Issuer's properties, business or affairs, unless such Losses have been found by final determination of a court or government body of competent jurisdiction not subject to appeal to have resulted from such Indemnified Party's fraud, material violation of U.S. securities laws, commission of a felony, material breach of the Portfolio Management Agreement, bad faith, wilful misconduct or gross negligence (as interpreted under the laws of the State of Delaware, USA) with respect to the Portfolio Manager's duties under the Portfolio Management Agreement or the Trust Deed. The obligations of the Issuer to indemnify any Indemnified Party for any Losses will be payable solely out of the Portfolio.

## THE PORTFOLIO

### Description of the Portfolio Assets

#### General

The investment objective of the Issuer is to generate multiple-of-money returns by investing in a portfolio (the “**Portfolio**”) that includes, but is not limited to, those financial or other investments or instruments that the Issuer purchases or originates from time to time (which will always constitute “qualifying assets” as described in s.110 of the Irish Taxes Consolidation Act 1997 (as amended) including, without limitation, investments in the debt and equity of private and public companies, bank loans and bonds, distressed and stressed investments, including control positions, single credits, portfolios of corporate loans, consumer receivables and mortgage loans and real estate and real estate-related securities (the “**Portfolio Assets**”).

#### The Portfolio Manager

The Portfolio Manager has experience in identifying undervalued situations across a broad range of asset categories and markets, and has developed, and intends to continue to develop, proprietary sourcing and servicing channels across these categories and markets.

Pursuant to the Portfolio Management Agreement, the Portfolio Manager is required to act in relation to the Portfolio, on behalf of the Issuer, and to carry out the duties and functions described below. The Portfolio identified by the Portfolio Manager will be purchased by, or on behalf of, the Issuer during a period from the date hereof until Final Maturity of the Securities out of the net proceeds of the issue of the Securities and the net proceeds of Capital Calls. The Portfolio Assets will be constituted and/or evidenced by the various trust deeds, indentures and other similar instruments applicable thereto. The Issuer believes that the Portfolio Manager is well positioned to manage the Portfolio effectively based on the strength of its professionals' financial and asset-based investment background, and experience in analyzing investment opportunities.

#### Selection Criteria

Selection of Portfolio Assets purchased by, or on behalf of, the Issuer will be in accordance with the following criteria:

1. each Portfolio Asset must be a “qualifying asset” within the meaning of s.110 of the Irish Taxes Consolidation Act, 1997;
2. each Portfolio Asset may be one of the following type of asset:
  - (i) distressed and stressed credits, including corporate, commercial and real estate loans and bonds including loans and bonds required in anticipation of debt for equity exchanges, including for the purpose of acquiring control;
  - (ii) performing, sub-performing or non-performing loans and securities secured by performing, sub-performing, or non-performing residential or commercial real estate;
  - (iii) corporate loan originations, including mezzanine loans and other investments in subordinate levels of the capital structure of various issuers. Such loans and investments may include related warrants, options or other securities with equity characteristics;
  - (iv) asset backed securities;
  - (v) Portfolios of finance receivables.

The Issuer may also invest in publicly traded or privately negotiated equity securities (such as preferred stock, common stock and warrants), in conjunction with the above or on a standalone basis. Any publicly traded securities may or may not be traded on a regulated market. Finally, the Issuer may pursue investments outside of the categories described above on opportunistic basis.

The Issuer expects to invest primarily in Western Europe, Asia and Australia, but may also invest elsewhere on an opportunistic basis.

## Reinvestment of Proceeds

Pursuant to the Portfolio Management Agreement and subject to Conditions 4, 5, 6, 8 and 14 and the exercise by the Issuer of its option to redeem the Securities at any time, the Portfolio Manager (acting on behalf of the Issuer) will use all reasonable efforts in a commercially reasonable manner to apply the proceeds of any realisation of Portfolio Assets ("**Principal Proceeds**") in the acquisition of substitute Portfolio Assets satisfying the Selection Criteria.

## Ongoing Monitoring

The Portfolio Manager (acting on behalf of the Issuer) will regularly monitor and manage the allocation of the Portfolio's assets in order to manage risk. The Portfolio Manager (acting on behalf of the Issuer) will also review the allocation of investments (i) by geographic location, (ii) as between liquid and illiquid instruments, (iii) as between performing and non-performing debt, (iv) as to the stage of reorganisation (for companies in or near insolvency) and (v) as to seniority in the capital structure, in an effort to ensure that the Portfolio Assets remain diversified. While the Portfolio Assets will generally be acquired and maintained in a manner consistent with these guidelines, the Portfolio Manager (acting on behalf of the Issuer) intends to manage the Portfolio Assets actively, and over time, may substantially alter asset allocations to take advantage of market opportunities as they occur.

## Reports

The Portfolio Manager, on behalf of the Issuer, shall, not later than the 60<sup>th</sup> day (or if such day is not a Business Day, the immediately following Business Day) of each calendar quarter make available a report (the "**Quarterly Report**") relating to the Portfolio.

The Quarterly Report shall contain the information set out below:

- (a) the aggregate principal balance of the Portfolio;
- (b) in respect of each Portfolio Asset, its principal balance, interest rate, stated maturity, obligor, currency and fair value (as determined in accordance with FAS 157);
- (c) the net sale proceeds of any Portfolio Asset sold since the date of the previous Quarterly Report;
- (d) net realised gains and net realised losses with respect to the Portfolio Assets since the date of the last Quarterly Report; and
- (e) the balances standing to the credit of each of the Accounts and the credits to and debits from such Accounts.

The Issuer will make available its audited annual financial statements, upon the request of any existing holders of the Securities who have identified themselves as being existing holders of the Securities and, if and to the extent required, have provided reasonable evidence to the effect that they are holders of the Securities and any such audited financial statements will also be available to the Trustee. Communication of any such requests shall be made by fax or letter marked for the attention of the following party on behalf of the Issuer: the Directors at 4<sup>th</sup> Floor, Hanover Building, Windmill Lane, Dublin 1, Ireland, Fax Number: + 353 1 900 6999.

## Mechanics of Purchase of Portfolio Assets

### Acquisition Transactions

The Issuer will acquire or originate an interest in Portfolio Assets pursuant to agreements entered into from time to time with counterparties recommended by, and on terms advised by, the Portfolio Manager (or on its behalf).

### Accounts

The Issuer has opened one or more accounts with the Account Bank each designated an "Account". All Deferred Proceeds will be credited to an Account. The Issuer is entitled, at its discretion, to withdraw funds standing to the credit of an Account, pursuant to such Accounts Agreement. The Portfolio Manager may, from time to time, direct the Account Bank, pursuant to the terms of the Agency Agreement, to release funds for investments by the Issuer in financial instruments or for lending by the Issuer to the shareholders of the Issuer or to meet the costs and expenses of the Issuer from time to time. The Issuer may sell its interest in all or part

of the Portfolio (or assets derived from the Portfolio) at its discretion. All cash proceeds received upon realisation of any interest in the Portfolio and any distribution, dividend or other payment in cash with respect to the Portfolio (or assets derived from the Portfolio) shall be credited to the Accounts for reinvestment in Portfolio Assets or for application towards Periodic Return Payments or payments of Paid-Up Amount of the Securities or to meet the costs and expenses of the Issuer from time to time.

### **Hedge Transactions**

The Issuer may, but is not required to, engage in hedging strategies, including, but not limited to, interest rate and currency hedging. In this regard, the Issuer may enter into short sales, foreign exchange transactions, and other derivative contracts or instruments.

## CERTAIN TAX CONSIDERATIONS

### General

Purchasers of Securities may be required to pay stamp taxes and other charges, in accordance with the laws and practices of the country of purchase, in addition to the issue price of each Security.

Potential purchasers who are in any doubt about their tax position on purchase, ownership, transfer or exercise of any Security should consult their own tax advisers. In particular, no representation is made as to the manner in which payments under the Securities would be characterised by any relevant taxing authority.

### Irish Taxation

*The following is a summary based on the laws and practices currently in force in Ireland regarding the tax position of investors beneficially owning their Securities and should be treated with appropriate caution. Particular rules may apply to certain classes of taxpayers holding Securities. The summary does not constitute tax or legal advice and the comments below are of a general nature only. Prospective investors in the Securities should consult their professional advisers on the tax implications of the purchase, holding, redemption or sale of the Securities and the receipt of interest thereon under the laws of their country of residence, citizenship or domicile.*

### Corporation Tax

In general, Irish companies pay corporation tax on their income at the rate of 12.5 per cent in relation to trading income and at the rate of 25 per cent, in relation to income that is not income from a trade.

Section 110 of the Irish Taxes Consolidation Act of 1997 ("**TCA 1997**") provides for special treatment in relation to "qualifying companies".

A qualifying company is a company which is resident in Ireland for tax purposes, which acquires qualifying assets or as a result of an arrangement with another person, holds or manages qualifying assets or enters into a legally enforceable arrangement with another person where that arrangement itself is a qualifying asset, and which carries on a business of holding, managing or both the holding and managing of qualifying assets, including in the case of plant and machinery acquired by the company, a business of leasing that plant and machinery. The qualifying company may not carry on any other activities, apart from activities which are ancillary to that business. The qualifying company must notify the Revenue Commissioners that it is or intends to be a qualifying company as defined above. In addition a company will not be regarded as a qualifying company if it enters into any transactions other than by a bargain made at arm's length (with the exception of securities issued by the company which provide for interest payments which represent more than a reasonable commercial return or are to any extent dependent on the results of the company's business).

A qualifying asset means an asset which consists of an interest (including a partnership interest) in

- A financial asset,
- Commodities, or
- Plant and machinery.

A financial asset is further defined to include the following:

1. shares, bonds and other securities;
2. futures, options, swaps, derivatives and similar instruments;
3. invoices and all types of receivables;
4. obligations evidencing debt (including loans and deposits);
5. leases and loan and lease portfolios;
6. hire purchase contracts;

7. acceptance credits and all other documents of title relating to the movement of goods;
8. bills of exchange, commercial paper, promissory notes and all other kinds of negotiable or transferable instruments;
9. carbon offsets; and
10. contracts for insurance and contracts for reinsurance

It is a requirement of section 110 TCA 1997 that the first transaction entered into by the qualifying company results in the holding and/or managing of qualifying assets of a value of not less than €10,000,000.

If the Issuer is a qualifying company for the purpose of section 110 TCA 1997, then profits arising from its activities will be chargeable to corporation tax at a rate of 25 per cent. However, for that purpose the profits of the Issuer will be computed in accordance with the provisions applicable to trading income. Where the interest on the Notes does not represent more than a reasonable commercial return on the principal outstanding and it is not to any extent dependent on the results of the Issuer's business (i.e. profit participating interest), the interest in respect of the Notes issued should be deductible in determining the taxable profits of the Issuer subject to the provisions of subsections (4A) and (5) of section 110 TCA 1997.

However, where the interest on the Notes represents more than a reasonable commercial return on the principal outstanding or is to any extent dependent on the results of the Issuer's business, the interest will not be deductible if:

- (a) at the time the interest is paid on the Notes, the Issuer is in possession, or aware, of information that can reasonably be taken to indicate that the payment is part of a scheme or arrangement, the main benefit or one of the main benefits of which is the obtaining of a tax relief or the reduction of a tax liability, the benefit of which would be expected to accrue to a person who, in relation to the Issuer is a "specified person"; or
- (b)
  - (i) the interest is paid to a person that:
    - (A) is not resident in Ireland; and
    - (B) is not a pension fund, government body or other person resident in a relevant territory who, under the laws of that relevant territory, is exempted from tax which generally applies to profits, income or gains in that territory (except where the person is a specified person); and
  - (ii) that interest is not subject, (A) to a tax under the laws of a "relevant territory", without any reduction computed by reference to the amount of such interest, which generally applies to profits, income or gains received in the relevant territory by persons from outside the relevant territory, or (B) to Irish withholding tax at the rate of 20%.

The provisions at (b) above will not apply, and the interest will be deductible, where the interest payment is made in respect of a "specified instrument".

However, interest payments in respect of a specified instrument will not be deductible where the interest is paid to a specified person and at the time the specified instrument was issued, the Issuer was in possession, or aware, of information, including information about any arrangement or understanding in relation to ownership of the specified instrument after that time, which could reasonably be taken to indicate that interest which would be payable in respect of that specified instrument would not be subject, without any reduction computed by reference to the amount of such interest, to a tax in a relevant territory which generally applies to profits, income or gains received in that territory, by persons, from sources outside that territory.

Separately, where a payment is made out of the assets of the Issuer under a "return agreement" that is dependent on the results of the Issuer's business or any part of its business and that interest would not be deducted in computing the profits or gains of the Issuer if the payment was to be treated for the purposes of the TCA 1997 (other than section 246 thereof) as a payment of interest in respect of securities of the Issuer other



than a specified instrument that was dependent on the results of the Issuer's business, that payment will not be deductible. For the purposes of the above analysis:

**"specified person"** includes (i) a company which directly or indirectly controls (as defined in section 11 TCA 1997) the Issuer or (ii) a person or connected persons from whom assets were acquired or to whom the Issuer has made loans or advances or with whom the Issuer has entered into certain "specified agreements", where the aggregate value of such assets, loans, advances or agreements represents not less than 75% of the aggregate value of the qualifying assets of the Issuer;

**"specified agreement"** includes any agreement, arrangement or understanding that (a) provides for the exchange, on a fixed or contingent basis, of one or more payments based on the value, rate or amount of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and (b) transfers to a person who is a party to the agreement, arrangement or understanding or to a person connected with that person, in whole or in part, the financial risk associated with a future change in any such value, rate or amount without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred;

**"specified instrument"** means a quoted Eurobond for purposes of section 64 of the TCA 1997 or a wholesale debt instrument within the meaning of section 246A of the TCA 1997;

**"relevant territory"** is:

- (a) a Member State of the European Communities other than Ireland;
- (b) not being such a Member State, a territory with which Ireland has a signed a double taxation agreement that is in effect; and
- (c) a territory with the government of which arrangements have been made which on completion of the procedures set out in section 826(1) of the TCA 1997 will have the force of law.

**"return agreement"** is a specified agreement whereby payments due under the specified agreement are dependent on the results of the Issuer's business or any part of the Issuer's business.

### **Withholding Tax**

In general, tax at the standard rate of income tax (currently 20 per cent), is required to be withheld from payments of Irish source interest. However, an exemption from withholding on interest payments exists under Section 64 of the Taxes Consolidation Act, 1997 (the **"1997 Act"**) for certain interest bearing securities (**"quoted Eurobonds"**) issued by a body corporate (such as the Issuer) which are quoted on a recognised stock exchange (which would include the GEM).

Any interest paid on such quoted Eurobonds can be paid free of withholding tax provided:

- 1. the person by or through whom the payment is made is not in Ireland; or
- 2. the payment is made by or through a person in Ireland, and either:
  - 2.1. the quoted Eurobond is held in a clearing system recognised by the Irish Revenue Commissioners (Euroclear, Clearstream Banking SA and Clearstream Banking AG are so recognised), or
  - 2.2. the person who is the beneficial owner of the quoted Eurobond and who is beneficially entitled to the interest is not resident in Ireland and has made a declaration to a relevant person (such as an Irish paying agent) in the prescribed form.

So long as the Securities are quoted on a recognised stock exchange and held in a recognised clearing system or if not so held, payments on the Securities are made by or through a paying agent that is not located in Ireland interest on the Securities can be paid by the Issuer and any paying agent acting on behalf of the Issuer without any withholding or deduction for or on account of Irish income tax.

If, for any reason, the quoted Eurobond exemption referred to above does not or ceases to apply, the Issuer can still pay interest on the Securities free of withholding tax provided it is a "qualifying company" (within the meaning of Section 110 of the 1997 Act) and provided the interest is paid to a person resident for tax purposes in a "relevant territory" (i.e. a member state of the European Union (other than Ireland) or in a country with which Ireland has concluded a double taxation agreement or a country with which Ireland has signed a double taxation agreement even though that treaty is not yet ratified). For this purpose, residence is determined by reference to the law of the country in which the recipient claims to be resident. This exemption from withholding tax will not apply, however, if the interest is paid to a company in connection with a trade or business carried on by it through a branch or agency located in Ireland.

### **Encashment Tax**

Encashment tax may arise in respect of interest paid on Securities that constitute "quoted Eurobonds" (see above). An encashment agent outside Ireland is not obliged to deduct Irish income tax from an encashment of interest on the Securities. An encashment agent in Ireland acting on behalf of a Security Holder, that obtains payment of or realises interest on any Security which qualifies for exemption from withholding tax on interest as a quoted Eurobond (see above) is required to withhold tax at the standard rate of Irish income tax (currently 20%). This encashment withholding tax does not apply in the case of a Security Holder who is beneficially entitled to the interest and who is resident outside Ireland and is able to verify that fact to the satisfaction of the encashment agent.

### **Taxation of Security Holder**

Notwithstanding that a Security Holder may receive interest on the Securities free of withholding tax, the Securities Holder may still be liable to pay Irish income tax. Interest paid on the Securities may have an Irish source and therefore be within the charge to Irish income tax and the universal social charge. Ireland operates a self assessment system in respect of income tax and any person, including a person who is neither resident nor ordinarily resident in Ireland, with Irish source income comes within its scope.

However, interest on the Securities will be exempt from Irish income tax if the recipient of the interest is resident in a relevant territory provided either (i) the Securities are quoted Eurobonds and are exempt from withholding tax as set out above, or (ii) in the event of the Securities not being or ceasing to be quoted Eurobonds exempt from withholding tax, if the Issuer is a qualifying company as defined in Section 110 of the 1997 Act, or (iii) if the Issuer has ceased to be a qualifying company as defined in Section 110 of the 1997 Act, the recipient of the interest is a company and the jurisdiction concerned imposes a tax that generally applies to interest receivable in that jurisdiction by companies from sources outside that jurisdiction.

Notwithstanding these exemptions from income tax, a corporate recipient that carries on a trade in Ireland through a branch or agency in respect of which the Securities are held or attributed, may have a liability to Irish corporation tax on the interest.

Security Holders receiving interest on the Securities which do not fall within the above exemptions may be within the charge to Irish income tax and the universal social charge on such interest.

### **Capital Gains Tax**

A holder of Securities will be subject to Irish tax on capital gains on a disposal of Securities unless such holder is neither resident nor ordinarily resident in Ireland and does not carry on a trade in Ireland through a branch or agency in respect of which the Securities are used or held.

### **Capital Acquisitions Tax**

A gift or inheritance comprising of Securities will be within the charge to capital acquisitions tax if either (i) the disponent or the donee/successor in relation to the gift or inheritance is resident or ordinarily resident in Ireland (or, in certain circumstances, if the disponent is domiciled in Ireland irrespective of his residence or that of the donee/successor), or (ii) if the Securities are regarded as property situate in Ireland. Registered Securities are generally regarded as situated where the principal register of Security Holders is maintained or is required to be maintained, but the Security may be regarded as situated in Ireland regardless of the location of the register as they secure a debt due by an Irish resident debtor and they may be secured over Irish property. Accordingly, if such Securities are comprised in a gift or inheritance, the gift or inheritance may be within the charge to tax regardless of the residence status of the disponent or the donee/successor.

### **Stamp Duty**

No stamp duty or similar tax is imposed in Ireland on the issue, transfer or redemption of the Securities provided the proceeds raised on the issue of the Securities are used in the course of the Issuer's business.

### **European Union Savings Directive**

The Council of the European Union has adopted a directive regarding the taxation of interest income known as the "European Union Directive on the Taxation of Savings Income (Directive 2003/48/EC)".

Ireland has implemented the directive into national law. Any Irish paying agent making an interest payment on behalf of the Issuer to an individual, and certain residual entities defined in the 1997 Act, resident in another EU Member State and certain associated and dependent territories of a Member State will have to provide details of the payment to the Irish Revenue Commissioners who in turn will provide such information to the competent authorities of the state or territory of residence of the individual or residual entity concerned.

## SUBSCRIPTION

Pursuant to a Subscription Agreement dated the Closing Date between the Issuer and Vista Fund I L.P. (the **Vista Fund I Subscription Agreement**) and a further Subscription Agreement dated the Closing Date between the Issuer and Vista Fund II L.P. (the **Vista Fund II Subscription Agreement**), subscription by Vista Fund I L.P. (as **Initial Purchaser I**) and Vista Fund II L.P. (as **Initial Purchaser II**, together with Initial Purchaser I being the **Initial Purchasers**) for Stated Amounts of the Securities in consideration for the Initial Subscription Amount and future Capital Amounts has been agreed with the Issuer. In addition, the Issuer has agreed to bear certain costs incurred in connection with the issue of the Securities.

### Selling Restrictions

#### *United States of America*

The Securities have not been and will not be registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, United States persons except in certain transactions exempt from the registration requirements of the Securities Act. Terms used in this paragraph have the meanings given to them by Regulation S under the Securities Act.

In addition, until 40 days after the commencement of the offering, an offer or sale of Securities within the United States by a dealer that is not participating in the offering may violate the registration requirements of the Securities Act.

#### *United Kingdom*

The Initial Purchasers have agreed that the Securities have been subscribed for on terms that:

- (a) a Securities Holder is a qualified investor (within the meaning of section 86 (7) of the Financial Services and Markets Act 2000) (the “**FSMA**”);
- (b) a Securities Holder has not offered or sold and will not offer to sell any Securities except to persons who are qualified investors or otherwise in circumstances which do not require a prospectus to be made available to the public in the United Kingdom within the meaning of section 85 (1) of the FSMA;
- (c) a Securities Holder has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the Securities in circumstances in which Section 21 (1) of the FSMA does not apply to the Issuer;
- (d) a Securities Holder has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Securities in, from or otherwise involving the United Kingdom.

#### *Republic of Ireland*

The Initial Purchasers have agreed that the Securities have been subscribed for on terms that:

- (a) they will not underwrite the issue of, or place the Securities, otherwise than in conformity with the provisions of the European Community (Markets in Financial Instruments) Regulations, 2007 (Nos. 1 to 3) (the “**MiFID Regulations**”);
- (b) they will not underwrite the issue of, or place, the Securities, otherwise than in conformity with the provisions of the Irish Central Bank Acts 1942 – 2011 (as amended) and any codes of conduct rules made under Section 117(1) of the Central Bank Act 1989;
- (c) they will not underwrite the issue of, or place, or do anything in Ireland in respect of the Securities otherwise than in conformity with the provisions of the Prospectus (Directive 2003/71/EC) Regulations 2005, the Irish Companies Acts 1963 to 2009 and any rules issued under Section 51 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 by the Central Bank; and
- (d) they will not underwrite the issue of, place or otherwise act in Ireland in respect of the Securities, otherwise than in conformity with the provisions of the Market Abuse (Directive 2003/6/EC) Regulations

2005 and any rules issued under Section 34 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 by the Central Bank.

## **GENERAL INFORMATION**

### **1. Listing and ISIN**

Application has been made to the Irish Stock Exchange for the Securities to be admitted to the Official List and to trading on the GEM. All expenses related to such admission will be met by the Portfolio Manager. The International Securities Identification Number (the "ISIN") of the Securities will be IE00B7LGP880.

### **2. Consents and Authorisations**

The Issuer has obtained all necessary consents, approvals and authorisations in Ireland (if any) in connection with the issue and performance of the Securities. The issue of the Securities was authorised by a resolution of the Board of Directors of the Issuer passed on 10 February 2012.

### **3. No Significant or Material Change**

Save as disclosed in this Listing Particulars, there has been no significant change in the financial or trading position or prospects of the Issuer since its incorporation on 7 December 2011 and there has been no material adverse change in the financial position or prospects of the Issuer since its incorporation on 7 December 2011. Since its incorporation, the Issuer has not commenced trading or established or created any accounts save as described in this Listing Particulars.

### **4. No Indebtedness**

Save as disclosed in this Listing Particulars, the Issuer has no outstanding or created but unissued loan capital, term loans, borrowings, indebtedness in the nature of borrowings or contingent liabilities, nor has the Issuer created any mortgages, charges or given any guarantees.

### **5. No Material Contracts**

Save as disclosed in this Listing Particulars since incorporation, no material contract other than the Vista Fund I Subscription Agreement and the Vista Fund II Subscription Agreement, being contracts in the ordinary course of business, has been entered into by the Issuer.

### **6. No Litigation**

The Issuer is not involved, and has not been involved, in any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the Issuer is aware) which may have or have had since the date of its incorporation a significant effect on the Issuer's financial position or profitability.

### **7. Accounts**

So long as any Security remains outstanding, copies of the most recent annual audited financial statements of the Issuer, when published, can be obtained at the specified offices of the Paying Agent during normal business hours. The first financial statements of the Issuer will be in respect of the period from incorporation to 31 December 2012.

### **8. Documents Available**

For so long as any Securities remain outstanding copies of the following documents may be inspected in physical form at the registered office of the Issuer and at the specified offices of the Issuer and the Paying Agent during usual business hours on any day (Saturdays, Sundays and public holidays excepted):

- (a) the Memorandum and Articles of Association of the Issuer;
- (b) the Trust Deed (which includes the form of the Securities);
- (c) the Agency Agreement;
- (e) the Portfolio Management Agreement;
- (f) the Vista Fund I Subscription Agreement;

- (g) the Vista Fund II Subscription Agreement; and
- (h) any future information memoranda, prospectuses, offering circulars and supplements.

Other than the Quarterly Reports relating to the Portfolio Assets (which will be delivered to the holders of the Securities by the Portfolio Manager) the Issuer does not intend to provide post-issuance information on the Securities nor on the Portfolio Assets.

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