

## FCOF III EUROPE UB SECURITIES LIMITED

(a private company with limited liability incorporated under the Companies Acts 1963 to 2009 of Ireland with number 493480)

USD2,000,000,000 Asset-Backed Security due 31 January 2041

The USD2,000,000,000 Asset-Backed Security due 31 January 2041 (the “**Security**”) was issued by FCOF III Europe UB Securities Limited (the “**Issuer**”) on 14 January 2011. Periodic Return Payments (as defined below) (if any) on the Security will be made annually in arrears on 30 June in each year, with the first payment (if any) being on 30 June 2012, or on such other dates as provided in this document (the “**Listing Particulars**”). Periodic Return Payments, including redemption amounts, at maturity or otherwise with respect to the Security may or may not be made by the Issuer and will depend upon the receipt by the Issuer of a return on certain investments that it makes.

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

The Security was subscribed by the initial purchaser of the Security for less than the full Stated Amount (being USD2,000,000,000) in aggregate thereof. The Issuer may from time to time require that the holder of the 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 the Security.

The Security matures on 31 January 2041 but may be redeemed prior thereto at the option of the Issuer.

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

The Security has not been registered under the United States Securities Act of 1933, as amended (the “**Securities Act**”). The Security will be offered only to accredited investors in reliance on the exemption from registration under Section 4(2) of the Securities Act. The Issuer has not and will not be registered under the Investment Company Act of 1940. Interests in the Security are 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 22 March 2012.

The Issuer accepts responsibility for the information contained in this Listing Particulars (the “**Listing Particulars**”) except for the information contained in the section entitled “The Portfolio Manager” 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. Fortress Credit Opportunities III Advisors LLC (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 Security 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 Security 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 Security 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 the Security and distribution of this Listing Particulars and other offering material relating to the Security, 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 the Security 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 “**\$**”, “**US dollar**” 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 Security which does not involve a public offering. In making your purchase, you are deemed to have made certain acknowledgments, representations and agreements. See “Subscription”.

The Security 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 Security. Any investment in the Security 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 Security, see “Risk Factors”.*

**The Issuer:** FCOF III Europe UB Securities Limited, a private company with limited liability incorporated under the laws of Ireland, having its registered office at Bracetown Business Park, Clonee, Co. Meath, Ireland and registered under the Companies Acts 1963 to 2009 of Ireland under number 493480, for the purpose of acquiring certain Portfolio Assets (as defined below), managing the Portfolio (as defined below), issuing the Security and engaging in certain related transactions as described in the Transaction Documents (as defined below).

The Issuer will not have any assets other than the Portfolio, Eligible Investments (as defined below), the balance standing to the credit of the Trading Accounts and the Expense Account and its rights under the Portfolio Management Agreement, each Trading Bank Accounts Agreement, each Hedge Agreement, each Security Lending Agreement, each Repurchase Agreement and the Trust Deed (each capitalised term as defined below and together the “**Transaction Documents**”) and certain other incidental rights and assets.

**The Security:** Pursuant to the Trust Deed (as defined below), the Issuer issued its USD2,000,000,000 Asset-Backed Security due 31 January 2041 on 14 January 2011 (the “**Closing Date**”) in consideration for the Subscription Amount (as defined below) and deferred payment by way of Capital Call (as defined below) in respect of the Security.

**Status, Ranking and Priority of the Security:** The Security constitutes direct, unsecured, unconditional and subordinated obligations of the Issuer. The Security ranks, as to payment in respect of amounts due upon the Security, 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**”). Payment on the Security will be made only to the extent of the value of the Net Recourse Assets (as defined in Condition 5.1 (*Final Redemption*)).

### **Pre-enforcement**

Prior to the exercise by the Trustee of its rights pursuant to Clause 7 of the Trust Deed, amounts standing to the credit of the Trading Accounts (including any moneys which represent Paid Up Amounts or Periodic Return Payments in respect of the Security which have become void under the Conditions) will be applied by the Issuer in the following order of priority:

- (1) firstly, in payment or satisfaction of the remuneration payable to the Trustee and all reasonable costs, charges, expenses and liabilities properly incurred by the Trustee under or in connection with the Transaction Documents (including but not limited to any legal or

professional fees and any value added or similar tax thereon);

- (2) secondly, in or towards payment pari passu and rateably of all remuneration and all reasonable costs, charges, expenses and liabilities properly incurred by the Trading Account Bank and the Paying Agent (including but not limited to any legal or professional fees and any value added or similar tax thereon);
- (3) thirdly, in or towards payment pari passu and rateably of all Periodic Return Payments accrued but unpaid in respect of the Securities and all Paid-Up Amounts accrued but unpaid in respect of the Securities; and
- (4) fourthly, the balance (if any) in payment to the Issuer.

#### **Post-enforcement**

All moneys received by the Trustee in respect of the Security 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 the Security which have become void under the Conditions) be held by the Trustee (each capitalised term as defined below) on trust to apply them in the following order of priority:

- (1) firstly, in payment or satisfaction of the remuneration payable to the Trustee and all reasonable costs, charges, expenses and liabilities properly incurred by the Trustee under or in connection with the Transaction Documents (including but not limited to any legal or professional fees and any value added or similar tax thereon);
- (2) secondly, in or towards payment pari passu and rateably of all remuneration and all reasonable costs, charges, expenses and liabilities properly incurred by the Trading Account Bank and the Paying Agent (including but not limited to any legal or professional fees and any value added or similar tax thereon);
- (3) thirdly, in or towards payment pari passu and rateably of all arrears of Periodic Return Payments remaining unpaid in respect of the Security and all Paid-Up Amounts or due on or in respect of the Security; and
- (4) fourthly, the balance (if any) in payment to the Issuer.

#### **The Trustee:**

Bank of America Trustees Limited, (the “**Trustee**”), acting through its office at 5 Canada Square, London E14 5AQ, United Kingdom, has been appointed as trustee of the holder of the Security (the “**Security Holder**”) pursuant to a trust deed to be dated as of the Closing Date (the “**Trust Deed**”). The Trust Deed is governed by Irish law.

#### **The Paying Agent:**

U.S. Bank National Association (the “**Paying Agent**”), acting through its office at One Federal Street, 3<sup>rd</sup> Floor, Boston MA 02110, U.S.A, has been appointed as the **Paying Agent**. It will provide paying agency services to the Issuer pursuant to the paying agency agreement to be dated as of the Closing Date (the “**Paying Agency Agreement**”). The Paying

Agency Agreement is governed by Irish law.

**Expense Account:** The Issuer will open and will maintain an account in Ireland (the “**Expense Account**”) with a bank to be approved by the Portfolio Manager.

**The Portfolio Manager:** The Issuer has engaged the services of Fortress Credit Opportunities III Advisors LLC (the “**Portfolio Manager**”) to perform certain purchase, disposal and management functions with respect to the Portfolio in accordance with an Amended and Restated Portfolio Management Agreement dated as of the Closing Date between the Issuer and the Portfolio Manager (the “**Portfolio Management Agreement**”). The Portfolio Management Agreement is governed by Irish law.

**Use of Proceeds:** The Issuer has applied the Initial Proceeds to acquire the Portfolio Assets (as defined below). The Issuer will apply Deferred Proceeds (as defined below) of the offering of the Security (after payment of applicable fees and expenses) to the acquisition of Portfolio Assets (or in the discharge of liability incurred to finance the acquisition of Portfolio Assets) (as described in “Portfolio – Description of the Portfolio Assets”).

**Portfolio Assets:** As of 14 January 2011, the Portfolio Assets comprise those financial or other investments or instruments that the Issuer authorises the Portfolio Manager to purchase or originate on its behalf from time to time under the Portfolio Management Agreement. Please see “Description of Portfolio Assets” as to the general nature of the assets to be acquired by the Portfolio Manager on behalf of the Issuer.

**Periodic Return Payments:** The return on the Security in respect of any Accrual Period (as defined below) (the “**Periodic Return**”) will be an amount equal to all income and gains (including deemed gains) earned by the Issuer in respect of the assets and liabilities and related arrangements of the Issuer, less (i) any losses suffered by the Issuer, for the Accrual Period, (ii) any losses carried forward from previous Accrual Periods, (iii) the sum of all operating expenses and costs (other than the accrual of Periodic Return) of the Issuer accrued in that Accrual Period and (iv) the Hold Back Amount (as defined below) for that Accrual Period. 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 payment on the Security in respect of that Accrual Period. References to income, gains and losses, expenses and costs of the Issuer shall be calculated in accordance with Irish tax law.

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 Security will be due and payable annually in arrears on 30 June in each year, with the first payment (if any) being on 30 June 2012.

**Hold Back Amount** shall be with respect to any Accrual Period, USD5,000 but increasing to (i) USD7,000 for Accrual Periods commencing after the time that the Paid-Up Amount exceeds USD500,000,000 and (ii) USD9,000 for Accrual Periods commencing after the time that the Paid-Up Amount

exceeds USD1,000,000,000. Provided that, where following a redemption pursuant to Condition 5 of the Security, the Paid-Up Amount on the last day of an Accrual Period is less than USD1,000,000,000 or USD500,000,000, then the Hold Back Amount for such Accrual Period shall decrease to respectively, USD7,000 or USD5,000.

**Final Maturity:**

The Security will mature at its Paid-Up Amount on 31 January 2041 or, if such day is not a Business Day, the immediately following Business Day (the “**Maturity Date**”) provided, however, that if the net assets of the Issuer on such date is less than the Paid-Up Amount of the Security, the Paid-Up Amount of the Security shall be reduced to an amount equal to the net assets of the Issuer and any claims of the Security Holder in respect of the Security shall be extinguished.

**Optional Redemption:**

The Issuer may at its option, having given not less than 1 Business Day nor more than 30 Business Days' notice to the Trustee, the Paying Agent and the Security Holder in accordance with Condition 15 of the Security (which notice shall be irrevocable), redeem the Security in whole or in part as it may in its absolute discretion elect and specify in such notice. The price at which the Security shall be redeemed shall be:

- (i) in the case of a redemption of the Security in whole, the Paid-Up Amount of the Security together with any Periodic Return Payment due; and
- (ii) in the case of a redemption of the Note in part, the Paid-Up Amount of such part of the Security (the “**Redeemed Amount**”) together with any Periodic Return Payment due with respect to such Redeemed Amount.

For the purposes of Condition 5.3 of the Security, the Periodic Return Payment due on the Security or part thereof shall be determined as if reference in Condition 4 of the Security to “Accrual Period” is reference to the period beginning on (and including) 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 (and including) the day falling 30 days prior to the date fixed for redemption of the Security.

**Trading Accounts:**

The Deferred Proceeds (and any cash proceeds relating to, or return on, the Portfolio) will be credited to one or more USD denominated interest bearing accounts in the name of the Issuer (the “**Trading Accounts**”) opened and maintained with one or more financial institutions selected by the Issuer (each a “**Trading Accounts Bank**”). Withdrawals from the Trading Accounts will only be made in accordance with the terms of an agreement between the relevant Trading Accounts Bank and the Issuer (the “**Trading Accounts Agreement**”). Prior to the withdrawal of monies standing to the credit of a Trading Account in application towards the acquisition of Portfolio Assets, the Issuer may, from time to time, direct any Trading Accounts Bank, pursuant to the relevant Trading Accounts Agreement, to release funds to the Portfolio Manager for investment in Eligible Investments (see “The Portfolio – Mechanics of Purchase of Portfolio Assets –



Trading Account”) or to the Expense Account to meet the costs and expenses of the Issuer from time to time. Each Trading Accounts Agreement will be governed by the law of the State of New York. The Portfolio Manager is responsible for managing the Issuer’s Trading Accounts. A Trading Account has been opened with Bank of America Merrill Lynch, 540 West Madison, 20<sup>th</sup> Floor, Chicago, IL 60661.

<b>Security 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 Security lending agreements or sell Portfolio Assets under agreements to repurchase such assets (each a “ <b>Security 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 Security is USD2,000,000,000.
<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 Security 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 Security is only 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 Security:</b>	The Security was represented on issue and is represented by a physical certificate in bearer form, without coupons attached.
<b>Governing Law:</b>	The Security is governed by Irish law.
<b>Listing:</b>	Application has been made to the Irish Stock Exchange for the Security 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 Paying Agency Agreement, the Subscription Agreement, the Portfolio Management Agreement, any Hedge Agreements, any Security Lending Agreements, any Repurchase Agreements, any Trading Accounts Agreement, the Expense Account Mandate and any 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 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 holder of the Security will receive the full amounts payable by the Issuer under the Security or that they will receive any return on its investment in the Security. 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 Security.

Prospective purchasers of the Security should be particularly knowledgeable in investment matters and should ensure that they understand the nature of the Security 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 the Security and that they consider the suitability of the Security as an investment in the light of their own circumstances and financial condition.

### **Security**

The Issuer will from time to time pledge certain of its assets and rights (together the “**Collateral**”) in favour of third party financing sources. The Collateral will be subject to a security interest, which will rank before the unsecured claims of the Security Holder.

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 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 Holder.

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

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 Security. Consequently, the Security Holder 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 Security. Where amounts received in respect of the Portfolio are insufficient to make payments on the Security, 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 personnel of the Portfolio Manager will be drawn from senior investment professionals of Fortress Affiliates (defined below), including those constituting the investment committee of the Portfolio Manager (the “**Investment Committee**”). The

Investment Committee and other investment professionals of the Portfolio Manager will devote such time and attention to the conduct of the Issuer's business as such business shall reasonably require. However, there can be no assurance that the members of the Investment Committee or such other investment professionals will devote any minimum number of hours each week to the affairs of the Issuer.

Furthermore, should one or more of such investment professionals become incapacitated or in some other way cease to perform duties for the Portfolio Manager on behalf of the Issuer, the Issuer's performance could be materially adversely affected through a diminished capacity to obtain investment opportunities, to structure and execute the Issuer's potential investments and to execute the Issuer's business plans. Neither the Issuer nor the Portfolio Manager currently intends to maintain key man life insurance with respect to any of such persons.

### **Liquidity of Portfolio Assets**

The Issuer may invest in Security, loans or other types of "financial 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**

As the affiliate of a registered investment adviser, 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 Fortress Investment Group LLC ("**Fortress**") and affiliates of Fortress ("**Fortress Affiliates**"). Fortress Affiliates engage in a broad spectrum of activities, including direct investment activities and investment advisory activities, and have extensive investment activities (including principal investments by Fortress Affiliates for their own account), both proprietary and on an agency basis, that are independent from, and may from time to time conflict or compete with, the Issuer's investment activities. These circumstances may give rise to numerous situations where interests may conflict, including the proprietary investments of Fortress Affiliates in entities or assets in which the Issuer invests, the investment by the Issuer and Fortress Affiliates in the same loans, other securities or assets or in different levels of the capital structure of the same issuer, or other dealings involving the Issuer, on the one hand, and Fortress Affiliates and/or businesses they invest in, on the other. The particular circumstances described below further illustrate some of the conflicts of interest that may arise. However, there can be no assurance that other conflicts of interest with the potential for adverse effects on the Issuer will not arise.

### **Calculation of the Periodic Return**

The Periodic Return will be calculated by the Portfolio Manager. The Portfolio Manager intends to act in good faith in calculating the Periodic Return however the Portfolio Manager's calculations will not be independently verified by any third party and the Portfolio Manager can give no assurance that its calculations will be free from error.

### **Allocating Investment Opportunities Among Fortress and its Affiliates**

Fortress currently offers a broad range of alternative investment products, including private equity funds, hedge funds and publicly traded alternative investment vehicles.

Generally, Fortress does not maintain “Chinese Walls” among respective management teams, including the Portfolio Manager, that manage these investment vehicles. Accordingly, information relating to investment opportunities may be shared across the investment teams, including the Portfolio Manager, that manage these investment vehicles. In addition, Fortress Affiliates invest their own capital in a broad range of investments. In certain cases, the investment objectives and programmes of Fortress Affiliates are similar to, or overlap with, the investment objectives of the Issuer. The Issuer does not have exclusive rights of any investment opportunity. Accordingly, Fortress Affiliates are under no obligation to offer investment opportunities to the Issuer and may choose to allocate all or part of any such opportunity to any Fortress Affiliate or business in which a Fortress Affiliate has invested. Fortress Affiliates may give advice and recommend securities to other Fortresses managed accounts which may differ from advice given to, or securities or other investments recommended or bought for, the Issuer, even though their investment objectives may be the same or similar.

The Issuer may not be afforded the chance to participate in attractive investment opportunities in which other Fortress Affiliates are given the opportunity to participate, or in some cases may be allocated a small part of an investment opportunity within the investment objectives of the Issuer when other Fortress Affiliates are allocated a larger portion. The Issuer may be prohibited (due to, for example, exclusivity rights granted to other investment funds or regulatory limitations) from pursuing certain investment opportunities and may find that its ability to participate in any particular opportunity may be substantially limited.

In making allocation decisions with respect to investment opportunities that could reasonably be expected to fit the investment objectives of multiple Fortress Affiliates, on the one hand, and the Issuer, on the other, Fortress anticipates that it will consider one or more of the following: the objectives and investment programmes of a Fortress Affiliate, any exclusive rights to investment opportunities that may have been granted to certain Fortress Affiliates, the expected duration of the investment in light of a Fortress Affiliate's objective and investment programme, the amount of available capital, the magnitude of the investment opportunity, regulatory and tax considerations, the degree of risk arising from an investment, the expected investment return, the internal source of the investment opportunity, relative liquidity, likelihood of current income or such other factors as Fortress deems to be appropriate. These factors provide substantial discretion to Fortress to resolve conflicts of interest arising from limited investment opportunities.

In addition, in the event that an investment opportunity is available in limited quantities, or certain Fortress Affiliates have sufficient available capital and desire to make a proprietary investment in such opportunity, or certain Fortress Affiliates have more or less of their capital invested in Fortress managed accounts or businesses in which they or other Fortress Affiliates have invested, such Fortress Affiliates may have an incentive to allocate such investment opportunity to themselves or other Fortress Affiliates rather than to the Issuer. The economic interests of Fortress Affiliates in certain of these other Fortress managed accounts and businesses in which Fortress Affiliates have interests, when combined with their rights to management and/or incentive fees from such Fortress managed accounts, may be significantly larger than their direct and indirect economic interests in the Issuer.

Finally, the Issuer and Fortress Affiliates may make investments or engage in other activities that express inconsistent views with respect to an entity in which they have invested, a particular security or relevant market conditions. If, for example, a Fortress Affiliate expresses a negative outlook on an entity in which the Issuer has invested, this may reduce the value of the Issuer's investments. For example, one or more Fortress managed accounts may take a long position in a particular security at the same time that another Fortress managed account takes a short position in the same or a related security (which could indirectly drive down the price of the long position). Similarly, the Issuer may elect to sell all or a part of an investment in an entity while Fortress Affiliates hold their investments in the same entity (or increase their exposure to it), or the Issuer may choose to make or increase the size of investment in an entity while Fortress Affiliates are selling all or part of their investment in the same entity.

### **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. In addition, the Issuer may in certain circumstances be liable for actions of their third-party coventurers or partners and creditors of such third-party coventurers or partners may have recourse to the Portfolio Assets in satisfaction of all or part of their claims against the relevant third party coventurer or partner, as the case may be. The Security constitutes direct, unsecured and subordinated obligations of the Issuer and ranks, as to payment in respect of amounts due on the Security junior to all Senior Obligations (as defined in Condition 2.1 of the Security) of the Issuer. See Condition 2.1 of the Security (*Status and Ranking*) below. Accordingly, the claim of a creditor of a third party coventurer or partner may rank ahead of the claim of the Security Holder.

### **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.

### **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 residential loans and securities, corporate loan originations 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. The Portfolio Manager believes that the Issuer's investment programme and risk management techniques moderate these risks. Because the Issuer's investments are actively managed, purchases and sales of investments may be frequent and may result in higher transaction costs to the Issuer. No guarantee or representation is made that the Issuer's investment

programme will be successful.

Certain of the investment strategies employed by the Issuer are based on historical relationships between prices. There can be no assurance that such historical relationships will continue, and no representation is made by the Portfolio Manager or the Issuer as to what results the Issuer will or are likely to achieve based on such trends and relationships.

### **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.

### **Valuation of Investments**

Certain of the securities or assets the Issuer will purchase will not be actively traded. In the absence of market comparisons, the Issuer will be required to resort to other pricing methodologies, including for example models based on assumptions regarding expected trends, historical trends following market conditions believed to be comparable to the then current market conditions and other factors believed at the time to be likely to influence the potential resale price of an investment. Such methodologies may not prove to be accurate and the Issuer's inability to accurately price securities or assets may result in adverse consequences for the Issuer.

### **Global Investments**

The Issuer may invest a substantial portion of its net assets in the debt, loans or other securities of issuers located outside the United States. 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 United States, 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. See "—Risks Associated with Bankruptcy Cases." Financial accounting standards and practices may differ, and there may be less publicly available information in respect of such companies.

### **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, and 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.

### **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 expects to regularly 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

Security. 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 Security.

### **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, international disorders and instability in domestic and foreign 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 have 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 may 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 asset 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 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 fund 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. 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 the 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.

### **Ability to Originate Loans on Advantageous Terms; Competition and Supply**

The Issuer's success may depend, in part, on the ability of the Issuer to originate loans on advantageous terms. In originating and purchasing loans, the Issuer competes with a broad spectrum of lenders, many of which have substantially greater financial resources and are more well known than the Issuer. Increased competition for, or a diminishment in the available supply of, qualifying loans could result in lower yields on such loans, which could reduce returns to investors.

### **Borrower Fraud**

Of paramount concern in originating or purchasing 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. In addition, the quality of the Issuer's investments in mortgage-backed securities ("MBS") and asset-backed securities ("ABS") are subject to the accuracy of representations made by the underlying borrowers. Accordingly, the Issuer is subject to the risk that the systems used by the originators of MBS and ABS to control for such accuracy are defective. See "—Risks Relating to Structured Finance securities."



### **Risks Associated with Investments in Distressed Assets**

The Issuer may invest a portion of its assets in distressed assets and portfolios of distressed assets, including non-investment grade obligations of U.S. and foreign companies (including 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. The level of analytical sophistication, both financial and legal, necessary for successful investment in distressed assets is unusually high.

### **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 Loans to Companies in Distressed Situations**

As part of its lending activities, the Issuer may originate or acquire loans to companies that are experiencing significant financial or business difficulties, including companies involved in bankruptcy or other reorganisation and liquidation proceedings. Although the terms of such financing may result in significant financial returns to the Issuer, they involve a substantial degree of risk. The level of analytical sophistication, both financial and legal, necessary for successful financing to companies experiencing significant business and financial difficulties is unusually high. There is no assurance that the Issuer will correctly evaluate the value of the assets collateralising the Issuer's loans or the prospects for a successful reorganisation or similar action. In any reorganisation or liquidation proceeding relating to a company that the Issuer funds, the Issuer may lose all or part of the amounts advanced to the borrower or may be required to accept collateral with a value less than the amount of the loan advanced by the Issuer to the borrower.

### **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 Portfolio is 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 the 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. 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 the 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. See also "—Risks Relating to Mortgage Loans, RMBS and CMBS—Mortgage Loans Underlying MBS." 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. Deficiencies in these systems may result in higher-than-expected borrower delinquencies or other factors affecting the value of the underlying assets, such as the inability to effectively pursue remedies against borrowers due to defective documentation. The Issuer may rely upon representations of the securitisation vehicles in respect of control systems and the securitised assets and conduct little or no diligence in respect of them. Accordingly, there can be no assurance that the control systems and the securitised assets will not be defective in a manner that could adversely affect the Issuer.

#### **Risks Relating to Mortgage Loans, RMBS and CMBS**

##### **Sub-prime Residential Mortgage Loans and RMBS Collateralised by Sub-Prime Residential Mortgage Loans.**

A portion of the Portfolio may consist of sub-prime residential mortgage loans and residential mortgage-backed securities ("RMBS") backed by sub-prime residential mortgage loans. "Sub-prime" mortgage loans refer to mortgage loans that have been originated using underwriting standards that are less restrictive than the underwriting requirements used as standards for other first and junior lien mortgage loan purchase programmes, such as the programmes of Fannie Mae and Freddie Mac. These lower standards include mortgage loans made to borrowers having imperfect or impaired credit histories (including outstanding judgments or prior bankruptcies), mortgage loans where the amount of the loan at origination is 80% or more of the value of the mortgage property, mortgage loans made to borrowers with low credit scores, mortgage loans made to borrowers who have other debt that represents a large portion of their income and mortgage loans made to borrowers whose income is not required to be disclosed or verified.

Due to economic conditions, including increased interest rates and lower home prices, as well as aggressive lending practices, sub-prime mortgage loans have in recent periods experienced increased rates of delinquency, foreclosure, bankruptcy and loss, and they are likely to continue to experience rates that are higher, and that may be substantially higher, than those experienced by mortgage loans underwritten in a more traditional manner. Thus, because of the higher delinquency rates and losses associated with sub-prime mortgage loans, the performance of the Issuer's sub-prime mortgage loans and RMBS backed by sub-prime mortgage loans could be correspondingly adversely affected.

##### **Risks Relating to CMBS.**

The Portfolio is also expected to include exposure to 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.

#### **Mortgage Loans Underlying MBS.**

RMBS evidence interests in, or are secured by, pools of residential mortgage loans and CMBS evidence interests in or are secured by a single commercial mortgage loan or a pool of commercial mortgage loans. Accordingly, any MBS which the Issuer may invest in are subject to all of the risks of the underlying mortgage loans. See "— Risks relating to Structured Finance Securities." Residential mortgage loans are secured by single-family residential property and are subject to risks of delinquency and foreclosure, and risks of loss. The ability of a borrower to repay a loan secured by a residential property is dependent upon the income or assets of the borrower. A number of factors, including a general economic downturn, depreciation of housing prices, acts of God, terrorism, social unrest and civil disturbances, may impair borrowers' abilities to repay their loans. Loans may become non-performing for a wide variety of reasons, including, without limitation, because the mortgaged property is too highly leveraged (and, therefore, the property is unable to generate sufficient income to meet its debt service payments), the property is poorly managed or because the mortgaged property has a high vacancy rate, has not been fully completed or is in need of rehabilitation. Such non-performing loans may require a substantial amount of workout negotiations and/or restructuring, which may entail, among other things, a substantial reduction in the interest rate, capitalisation of interest payments and a substantial write-down of the principal of the loan. However, even if such restructuring were successfully accomplished, a risk exists that upon maturity of such mortgage loan, replacement "take-out" financing will not be available.

#### **Predatory and Other Lending Laws.**

The Issuer may be subject to liability for potential violations of predatory and other lending laws, which could adversely impact the Issuer's results of operations, financial conditions and business.

Various federal, state and local laws have been enacted that are designed to discourage predatory lending practices and more are currently proposed. The federal Home Ownership and Equity Protection Act of 1994, commonly known as HOEPA, prohibits inclusion of certain provisions in residential mortgage loans that have mortgage rates or origination costs in excess of prescribed levels and requires that borrowers be given certain disclosures prior to origination. Some states have enacted, or may enact, similar laws or regulations, which in some cases impose restrictions and requirements greater than those in HOEPA. In addition, under the anti-predatory lending laws of some states, the origination of certain residential mortgage loans (including loans that are not classified

as “high cost” loans under applicable law) must satisfy a net tangible benefits test with respect to the related borrower. This test may be highly subjective and open to interpretation. As a result, a court may determine that a residential mortgage loan, for example, does not meet the test even if the related originator reasonably believed that the test was satisfied.

### **Risks Relating to ABS**

ABS are, generally, Structured Finance Securities (other than RMBS or CMBS) backed by consumer receivables, commercial receivables or securities. The structure of an ABS and the terms of investors' interest in the collateral can vary widely depending on the type of collateral, the desires of investors and the use of credit enhancements. Although the basic elements of all ABS are similar, individual transactions can differ markedly in both structure and execution. Important determinants of the risks associated with holding ABS include: the relative seniority or subordination of the class of ABS; the relative allocation of principal and interest payments in the priorities by which such payments are made under the governing documents; how credit losses affect the issuing vehicle and the return to investors; whether 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 asset-backed instrument) any remaining balance in the accounts may revert to the issuing company; and the extent to which the company that is the actual source of the collateral assets is obligated to provide support to the issuing vehicle or to the investors. In addition, certain ABS (particularly subordinated ABS) provide that the non-payment of interest in cash on such securities will not constitute an event of default in certain circumstances and the holders of such securities will not have available to them any associated default remedies. Interest not paid in cash will often be capitalised and added to the outstanding principal balance of the related security. Any such deferral may reduce the yield on such ABS. Like MBS and other Structured Finance Securities, ABS are subject to risks associated with the assets securitised. See “— Risks relating to Structured Finance Securities.”

### **Risks Relating to Increases in Prepayment Rates of Debt Underlying MBS and ABS**

The frequency at which prepayments (including both voluntary prepayments by the borrowers and liquidations due to defaults and foreclosures) occur on mortgage loans underlying MBS and ABS will be affected by a variety of factors including the prevailing level of interest rates as well as economic, demographic, tax, social, legal, and other factors. Generally, borrowers tend to prepay their mortgages when prevailing mortgage rates fall below the interest rates on their mortgage loans.

### **Effect of Changes in Interest Rates on Investments in Mortgage Loans, MBS and ABS**

Most mortgage loans, MBS and ABS, especially fixed rate mortgage loans, MBS and ABS, decline in value when long-term interest rates increase. Even in the case of MBS that are guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae, such guarantees do not protect the Issuer from declines in market value caused by changes in interest rates. In the case of adjustable rate mortgages (“ARM”), RMBS and ABS collateralised by ARMs, increases in interest rates can lead to increases in delinquencies and defaults as borrowers become less able to make their mortgage payments following payment resets. Declines in market value, if not offset by any corresponding gains on hedging instruments, may ultimately reduce earnings or result in losses to the Issuer, which may negatively affect cash available for distribution to Investors. The Issuer could also realise immediate losses if the Security were sold.

### **Risks Relating to Subordinated Securities**

There are no restrictions on the credit quality of the Issuer's investments. Securities in which the Issuer may invest may be deemed by rating companies to have substantial vulnerability to default in payment of interest and/or principal. Other securities may have the lowest quality ratings or may be unrated. In the case of below-investment-grade (or unrated) MBS or ABS, these securities will generally be subordinated to other more “senior” securities of the same issue or series. The default-related risks of the underlying

mortgages or assets will be severely magnified in subordinated securities. Certain subordinated securities ("first loss securities") absorb all losses from default before any other class of securities is at risk. Such securities therefore possess some of the attributes typically associated with equity investments. Default risks may also be further pronounced in the case of MBS or ABS secured by, or evidencing an interest in, a relatively small or less diverse pool of underlying mortgage loans or assets. Accordingly, these securities may experience significant price and performance volatility with respect to a variety of market and non-market factors.

### **Common Stock**

The Issuer may have exposure to publicly-traded and privately-held common stocks. Although common stocks have historically generated higher average total returns than fixed-income securities over the long term, common stocks also have experienced significantly more volatility in those returns and in recent years have significantly underperformed relative to fixed-income securities. The equity securities acquired by the Issuer may fail to appreciate and may decline in value or become worthless.

### **Private Company**

Investment in the debt and equity in private companies involves a number of significant risks, including:

- These companies may have limited financial resources and may be unable to meet their obligations.
- They typically have shorter operating histories, narrower product lines and smaller market shares than larger businesses, which tend to render them more vulnerable to competitors' actions and market conditions, as well as general economic downturns.
- They are more likely to depend on the management talents and efforts of a small group of persons; therefore, the death, disability, resignation or termination of one or more of these persons could have a material adverse impact on the portfolio company and, in turn, on the Issuer.
- They generally have less predictable operating results, may from time to time be parties to litigation, may be engaged in rapidly changing businesses with products subject to a substantial risk of obsolescence, and may require substantial additional capital to support their operations, finance expansion or maintain their competitive position.

Little public information exists about these companies. The greater difficulty in making a fully informed investment decision raises the risk of misjudging the company and the Issuer may lose money on its investments.

### **Highly Volatile Instruments**

The prices of derivative instruments, including forward contracts, swaps and options, are highly volatile. Price movements of forward contracts and other derivative contracts in which the Issuer's assets may be invested are influenced by, among other things, interest rates, changing supply and demand relationships, trade, fiscal, monetary and exchange control programmes and policies of governments, and national and international political and economic events and policies. In addition, governments from time to time intervene, directly and by regulation, in certain markets, particularly those in currencies and financial instrument options. Such intervention often is intended directly to influence prices and may, together with other factors, cause all of such markets to move rapidly in the same direction because of, among other things, interest rate fluctuations. The Issuer also is subject to the risk of the failure of any exchange on which its positions trade or of its clearinghouses.

### **Short Selling**

The Issuer's investment programmes may include short selling. Short selling involves selling securities which may or may not be owned and borrowing the same securities for delivery to the purchaser, with an obligation to replace the borrowed securities at a later date. Short selling allows the investor to profit from declines in market prices to the extent such decline exceeds the transaction costs and the costs of borrowing the securities. The extent to which a Issuer engages in short sales will depend upon its investment strategy and perception of market direction. A short sale creates the risk of a theoretically unlimited loss, in that the price of the underlying security could theoretically increase without limit, thus increasing the cost to the Issuer of buying those securities to cover the short position. There can be no assurance that the securities necessary to cover a short position will be available for purchase. Purchasing securities to close out the short position can itself cause the price of the securities to rise further, thereby exacerbating the loss

### **Options**

The Issuer may purchase and sell ("write") options on securities and currencies on national and international securities exchanges and in the domestic and international over-the-counter markets. The seller ("writer") of an uncovered put option assumes the risk of a decline in the market price of the underlying security or currency below the exercise price of the option. The seller of a put option which is covered (e.g., the writer has a short position in the underlying security or currency) assumes the risk of an increase in the market price of the underlying security or currency above the sales price (in establishing the short position) of the underlying security or currency, plus the premium received, and gives up the opportunity for gain on the underlying security or currency below the exercise price of the option. The buyer of a put option assumes the risk of losing its entire investment in the put option.

### **Forward Trading**

Forward contracts and options thereon, unlike futures contracts, are not traded on exchanges and are not standardised; rather, banks and dealers act as principals in these markets, negotiating each transaction on an individual basis. Forward and "cash" trading is substantially unregulated; there is no limitation on daily price movements and speculative position limits are not applicable. The principals who deal in the forward markets are not required to continue to make markets in the currencies or commodities they trade and these markets can experience periods of illiquidity, sometimes of significant duration. There have been periods during which certain participants in these markets have refused to quote prices for certain currencies or commodities or have quoted prices with an unusually wide spread between the price at which they were prepared to buy and that at which they were prepared to sell. Disruptions can occur in any market traded by the Issuer due to unusually high trading volume, political intervention or other factors. The imposition of controls by governmental authorities might also limit such forward trading to less than that which the Portfolio Manager would otherwise recommend, to the possible detriment of the Issuer. Market illiquidity or disruption could result in major losses to the Issuer.

### **Loans and Repos of Portfolio Security**

The Issuer may lend its portfolio securities, enter into repurchase agreements ("repo") or enter into other transactions constituting a loan of the Issuer's assets. By doing so, the Issuer would attempt to increase their income through the receipt of interest or fees on the loan or repo as the case may be. In the event of the bankruptcy of the other party to a securities loan or repurchase agreement, the Issuer could experience delays in recovering the Security lent or repo'd. To the extent that the value of the securities the Issuer lent or repo'd has increased, the Issuer could experience a loss if the securities are not recovered.

### **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 endeavor 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.

### **Relative Value Strategies**

Relative value strategies involve taking offsetting long and short positions in comparable securities which have either an economic or mathematical relationship to each other and where a distortion exists between either the historical price or the fair value of that relationship. These strategies may include merger arbitrage, convertible arbitrage, intra-industry pairs trades, cross-holdings and capital structure trades. Although there is an economic or mathematical relationship between such long and short positions, there is no guarantee that the Portfolio Manager's assessment of that relationship will be correct. Furthermore, because the Issuer's strategies involve short selling, there is a risk that the Issuer will not be able to maintain their abilities to borrow securities that have been sold short. See "—Short Selling."

### **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.

### **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 a 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, underground storage tanks, 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 Holder 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 Security, the Security Holder will not be entitled to receive additional amounts to compensate for such withholding tax.

### **Calls on the Security**

In order to fund the ongoing activities of the Issuer, the Issuer will make further calls in respect of the unpaid Stated Amount of the Security. 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 holder of the Security will honour each call made on the Security. The Issuer is entitled to cancel the Security if 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 Holder 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 Holder;

- (ii) the potential for the examiner to seek to set aside any negative pledge in the Security 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 Holder.

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 Security. Prospective Security Holders should consult with their own advisors before deciding to invest in the Security.

## TERMS AND CONDITIONS OF THE SECURITY

The USD2,000,000,000 Asset-Backed Security due 31 January 2041 (the “**Security**”, which expression shall, unless the context otherwise requires include any further Security issued pursuant to Condition (as defined below) 14 and forming a single series with the Security) of FCOF III Europe UB Securities Limited (the “**Issuer**”) are (a) constituted by, subject to and have the benefit of, a trust deed dated 14 January 2011 (the “**Closing Date**”) (as amended or supplemented from time to time, the “**Trust Deed**”) between the Issuer and Bank of America Trustees 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 a paying agency agreement dated 14 January 2011 (as amended or supplemented from time to time, the “**Paying Agency Agreement**”) between the Issuer and U.S. Bank National Association as Paying Agent (the “**Paying Agent**”, which expression includes any successor Paying Agent appointed from time to time in connection with the Security), Fortress Credit Opportunities III Advisors LLC 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 Paying Agency Agreement and are subject to their detailed provisions. The holders of the Security (the “**Security Holder**” 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 Paying Agency Agreement applicable to them. Copies of the Trust Deed and the Paying Agency Agreement are available for inspection by the Security Holder during normal business hours at the Specified Offices (as defined in the Trust Deed) of the Paying Agent, the initial Specified Offices of which are set out below. Copies are also available for inspection by the Security Holder during normal business hours and upon receipt of reasonable notice from the Security Holder, at the registered office for the time being of the Trustee, being at the date hereof 5 Canada Square, London E14 5AQ, United Kingdom.

### 1. Form, Denomination and Title

#### 1.1. Form and Denomination

The Security is represented by a physical certificate in bearer form in the denomination of USD2,000,000,000, without coupons attached (the “**Certificate**”).

#### 1.2. Title

Title to the Security passes by delivery. Each person who is for the time being a holder of the Security shall be treated by the Issuer, the Trustee and the Paying Agent as the holder of the Stated Amount of the Security (and the expression “**Security Holder**” and references to “**holding of the Security**” and to “**holder of the Security**” shall be construed accordingly), for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any interest in it, any writing on it, or its theft or loss) and no person will be liable for so treating the holder.

1.3. *Paid-Up Amount*

On the Closing Date, the initial holder of the 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 the Certificate in respect of the Security (the “**Stated Amount**”). The Issuer will record details of the Security Holder and the Subscription Amount on the Security and will notify same to the Paying Agent and to the Trustee. The “**Paid-Up Amount**” of the Security at any time is (x) the sum of the Subscription Amount and all Capital Amounts (as defined in Condition 8 below) less (y) the sum of all Redeemed Amounts (as defined in Condition 5.3 below) in respect of the Security.

1.4. *Certificates*

References in these Conditions to the Security shall include the Certificate.

2. **Status, Ranking and Priority**

2.1. *Status and Ranking*

The Security will constitute direct, unsecured, unconditional and subordinated obligations of the Issuer. The Security will rank, as to payment in respect of amounts due upon the Security, 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. **Pre- enforcement:**

Prior to the exercise by the Trustee of its rights pursuant to Clause 7 of the Trust Deed, amounts standing to the credit of the Trading Accounts (including any moneys which represent Paid Up Amounts or Periodic Return Payments in respect of the Security which have become void under the Conditions) will be applied by the Issuer in the following order of priority:

- (1) firstly, in payment or satisfaction of the remuneration payable to the Trustee and all reasonable costs, charges, expenses and liabilities properly incurred by the Trustee under or in connection with the Transaction Documents (including but not limited to any legal or professional fees and any value added or similar tax thereon);
- (2) secondly, in or towards payment *pari passu* and rateably of all remuneration and all reasonable costs, charges, expenses and liabilities properly incurred by the Trading Account Bank and the Paying Agent (including but not limited to any legal or professional fees and any value added or similar tax thereon);
- (3) thirdly, in or towards payment *pari passu* and rateably of all Periodic Return Payments accrued but unpaid in respect of the Securities and all Paid-Up Amounts accrued but unpaid in respect of the Securities; and
- (4) fourthly, the balance (if any) in payment to the Issuer.

2.2.2. **Post- enforcement:**

All moneys received by the Trustee in respect of the Security 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) firstly, in payment or satisfaction of the remuneration payable to the Trustee and all reasonable costs, charges, expenses and liabilities properly incurred by the Trustee under or in connection with the Transaction Documents (including but not limited to any legal or professional fees and any value added or similar tax thereon);
- (2) secondly, in or towards payment *pari passu* and rateably of all remuneration and all reasonable costs, charges, expenses and liabilities properly incurred by the Trading Account Bank and the Paying Agent (including but not limited to any legal or professional fees and any value added or similar tax thereon);
- (3) thirdly, in or towards payment *pari passu* and rateably of all arrears of Periodic Return Payments remaining unpaid in respect of the Security and all Paid-Up Amounts or due on or in respect of the Security; and
- (4) fourthly, the balance (if any) in payment to the Issuer.

### 3. Covenants

So long as the Security remains outstanding (as defined in the Trust Deed), upon the express written direction of the holders of all outstanding Security (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 “financial 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 (as defined below) by various means including, *inter alia*, the issue of Security pursuant to Condition 1.3 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;
  - (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; or
- (v) amend, supplement or otherwise modify its Memorandum and Articles of Association.

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

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

The return on the Security (the **“Periodic Return”**) in respect of any Accrual Period will be an amount equal to all income and gains (including deemed gains) earned by the Issuer in respect of the assets and liabilities and related arrangements of the Issuer, less (i) any losses suffered by the Issuer, for the Accrual Period, less (ii) any losses carried forward from previous Accrual Periods, (iii) the sum of all operating expenses and costs (other than the accrual of Periodic Return) of the Issuer accrued in that Accrual Period and (iv) the Hold Back Amount for that Accrual Period. The Periodic Return will be calculated by the Portfolio Manager.

A payment of the Periodic Return (a **“Periodic Return Payment”**), if any, will be due and payable on 30 June 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 first Periodic Return Payment will be due and payable 30 June 2012 with respect to the financial period beginning with the date of incorporation of the Issuer and ending 31 December 2011. 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 Agents and the Security Holder 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 the 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 Holder, the Trustee the Paying Agents and the Issuer. In doing so, the person appointed by the Issuer shall apply the foregoing provisions of this Condition.

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

**“Financial Year”** means the period from and including 1 January of each year to and including 31 December of the same year, provided that the Issuer's first Financial Year will be the period from and including 10 January 2011 to and including 31 December 2011.

and

**“Hold Back Amount”** means, with respect to any Accrual Period, USD5,000 but increasing to (i) USD7,000 for Accrual Periods commencing after the time that the Paid-Up Amount exceeds USD500,000,000 and (ii) USD9,000 for Accrual Periods commencing after the time that the Paid-Up Amount exceeds USD1,000,000,000. Provided that, where following a redemption pursuant to Condition 5, the Paid-Up Amount on the last day of an Accrual Period is less than USD1,000,000,000 or USD500,000,000, then the Hold Back Amount for such Accrual Period shall decrease to respectively, USD7,000 or USD5,000.

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, the Security will be redeemed on 31 January 2041 (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 the Security (together, the **“Redemption Amount”**) provided, however, that, if the assets of the Issuer represented by the Portfolio, any Eligible Investments and the balance standing to the credit of the Trading Accounts (the **“Recourse Assets”**) on such date, after the deduction of any Winding Up Reserve (as defined in 5.2 below) (the **“Net Recourse Assets”**) are less than the aggregate of all Redemption Amount, 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 the Security Holder 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 Security will be paid out of the balance standing to the credit of the Expense 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 Expense Account at such time, an amount sufficient to cover such excess (the **“Winding Up Reserve”**) shall be deducted from the proceeds of the Recourse Assets and transferred to the Expense Account. The amount of the Winding Up Reserve shall be determined by the directors of the Issuer acting reasonably.

### 5.3. *Optional Redemption*

The Issuer may at its option, having given not less than 1 Business Day nor more than 30 Business Days' notice to the Trustee, the Paying Agents and the Security Holder in accordance with Condition 15 (which notice shall be irrevocable), redeem the Security in whole or in part as it may in its absolute discretion elect and specify in such notice. The price at which the Security shall be redeemed shall be:

- (i) in the case of a redemption of the Security in whole, the Paid-Up Amount of the Security together with any Periodic Return Payment due; and
- (ii) in the case of a redemption of the Note in part, the Paid-Up Amount of such part of the Security (the **“Redeemed Amount”**) together with any Periodic Return Payment due with respect to such Redeemed Amount.

For the purposes of this Condition 5.3, the Periodic Return Payment due on the Security or part thereof shall be determined as if reference in Condition 4 to "Accrual Period" is reference to the period beginning on (and including) 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 (and including) the day falling 30 days prior to the date fixed for redemption of the Security.

5.4. *Purchase*

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

5.5. *Cancellation*

Once redeemed in whole or purchased pursuant to Condition 5.1, 5.3 or 5.4 the Security will be cancelled and may not be re-issued or resold.

5.6. *Other Redemption*

The Security 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 of Periodic Return and Paid-Up Amounts shall be made by the Paying Agent, on behalf of the Issuer, in accordance with these Conditions and the Paying Agency Agreement.

6.2. *Issuer to pay Paying Agent*

In order to provide for the payment of Paid-Up Amounts and Periodic Return Payments in respect of the Security as the same becomes due and payable, the Issuer shall pay to the Paying Agent, in respect of any date on which such payments become due (the **Relevant Date**) an amount equal to the Paid-Up Amount and/or (as the case may be) Periodic Return Payment falling due in respect of the Security by the time specified in Clause 6.3 below on three Business Day prior to the Relevant Date.

6.3. *Manner and time of payment*

Each amount payable under Clauses 6.1 and 6.6 shall be paid unconditionally by credit transfer in US dollars and in same day, freely transferable, cleared funds not later than 17:00 (New York time) on the Business Day prior to the Relevant Date to such account with such bank in the United States of America as the Paying Agent may from time to time by notice to the Issuer (with a copy to the Trustee) specify for such purpose. The Issuer shall ensure that the bank through which any payment is effected will supply the Paying Agent by 17:30 (New York time) on the Business Day prior to a Relevant Date an irrevocable confirmation (by authentic SWIFT message) that payment will be made on the relevant due date for payment.

6.4. *Exclusion of liens and interests*

The Paying Agent shall be entitled to deal with each amount paid to it under this Clause 6 in the same manner as other amounts paid to it as a banker by its customers; *provided that*:

- 6.4.1. it shall not exercise against the Issuer any lien, right of set-off or similar claim in respect thereof;
- 6.4.2. it shall not be liable to any person for interest thereon; and
- 6.4.3. it shall not be obliged to hold any funds received by it hereunder in a



segregated account or accounts except as required by law.

A record in respect of the Security Holder and of each payment made on the Security of the Security Holder distinguishing between any payment of Paid-Up Amount and Periodic Return will be maintained by the Paying Agent and notified to the Security Holder annually or on the request of the Security Holder in each case, provided that the Paying Agent receives all the necessary information required to maintain such record of payments from the Issuer. Such record shall be prima facie evidence that the payment in question has been made.

## **7. Payments of Periodic Return & Paid-up Amounts to the Paying Agent**

### **7.1. Application by Paying Agent**

Subject to the Paying Agent receiving funds in accordance with Clause 6.1 and 6.2, the Paying Agent shall apply each amount paid to it hereunder in accordance with Clause 7 and shall not be obliged to repay any such amount unless the claim for the relevant payment becomes void under Condition 11, in which event it shall refund reclaimed funds to the Issuer such portion of such amount as relates to such payment by paying the same by credit transfer in US dollars to such account as the Issuer has by notice to the Paying Agent specified for the purpose.

### **7.2. Determination of the Periodic Return Payment and the Paid-Up Amount**

The Portfolio Manager will notify the Issuer, the Security Holder, the Trustee and the Paying Agent, promptly following determination thereof, and in any event at least three Business Days prior to a Relevant Date, of the Periodic Return Payment, if any, and/or the Paid-Up Amount, if any, due on such date. Such notification shall be accepted by the Trustee and the Paying Agent as conclusive evidence of amounts due on a Relevant Date.

### **7.3. Failure of the Portfolio Manager to determine the amounts due on Relevant Date**

If the Portfolio Manager does not notify the Issuer, the Security Holder, the Trustee and the Paying Agent in the manner referred to in Clause 7.2 at least three Business Days prior to a Relevant Date, the Issuer will, at its cost and expense, pursuant to the Conditions, appoint an internationally recognised firm of accountants (acting as experts not arbitrators) to carry out such determination. Such determination shall be deemed to have been made by the Portfolio Manager. Upon receipt of such determination by the Issuer, the Issuer shall promptly notify the Trustee, the Security Holder, the Paying Agents and the Portfolio Manager thereof. Such notification shall be accepted by the Trustee and the Paying Agent as conclusive evidence of amounts so due. If any amount is due and payable by the Issuer, as set out in such determination, such amounts shall be paid by the Issuer to the Paying Agent forthwith (such date of payment being set out in the notification delivered by the Issuer pursuant to this Clause 7.3 and such date shall be the Relevant Date for the purposes of this Clause 7).

### **7.4. 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 Holder in respect of such payments.

## **8. Capital Call**

The Issuer may from time to time elect that the Security Holder be required to pay the Issuer, with respect to the Security, an amount not exceeding the Stated Amount of the Security less the Paid-Up Amount, from time to time (a "**Capital Amount**"). The Issuer may make this election on more than one occasion and in a minimum amount of USD100,000 provided that, upon such election, the sum of the Paid-Up Amount of the Security and the proposed Capital Amount does not exceed the aggregate Stated Amount of the Security. The Issuer, upon making such election, shall notify the Trustee and the Security Holder in accordance with Condition 15 (a "**Capital Call Notice**") of a

date that is a Business Day not falling more than 30 days or less than 1 day following the service of such notice (the “**Capital Call Date**”) on which date the Security Holder is required to pay to the Issuer the Capital Amount and the Capital Call Date with respect to the Security. The Capital Call Notice shall specify the Capital Amount with respect to the Security and the details of the account of the Issuer. The Issuer shall provide a copy of the Capital Call Notice to the Paying Agent.

**9. Taxation**

All payments of Paid-Up Amount and Periodic Return Payments in respect of the Security 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 Security which default is incapable of remedy or is not in the opinion of the Trustee 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 (in the opinion of the Trustee) 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 (in the opinion of the Trustee) 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 Security, (ii) to ensure that those obligations are legally binding and enforceable and (iii) to make the Security 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 (in the opinion of the Trustee) obligations under the Security;

then each Security shall, by notice in writing given to the Issuer by the Trustee (subject to the Trustee being first indemnified and/or secured and/or pre-funded to its satisfaction) 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 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 Net Recourse Assets and any claims of the Security Holder 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 presentation for payment is made as required by Condition 6 within a period of 10 years in the case of Paid-Up Amounts and five years in the case of Periodic Return Payments from the appropriate relevant date.

**12. Replacement of the Certificate**

If the Certificate is lost, stolen, mutilated, defaced or destroyed it may be replaced at the specified office of the Trustee 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 may require (provided that the requirement is reasonable in the light of prevailing market practice). A mutilated or defaced Certificate must be surrendered before a replacement 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 Holder, including the sanctioning of a modification of any of these Conditions. A Written Direction shall be binding on the Security Holder. 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 Security 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 Holder create and issue further securities either having the same terms and conditions as the Security 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 Security) or upon such terms as the Issuer may determine at the time of their issue. References in these Conditions to the Security include (unless the context requires otherwise) any other securities issued pursuant to this Condition and forming a single series with the Security.

#### **15. Notices**

The Security Holder may notify the Issuer that it has an interest in the Security and of its mailing address and facsimile number. Notices to the Security Holder will be valid and deemed to have been made to the Security Holder 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 Agents 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 Paying Agency Agreement.

#### **16. Enforcement**

The Trustee shall take such proceedings against the Issuer as it may think fit to enforce repayment of the Security 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 Agents**

Under the Trust Deed, the Trustee is entitled to be indemnified and relieved from responsibility in certain circumstances and to be paid its costs and expenses in priority to the claims of the Security Holder. 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 Holder (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 Holder and, in particular but without limitation, shall not have regard to the consequences of any such exercise for the Security Holder resulting from its 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 the Security Holder 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 the Security Holder.

In acting under the Paying Agency Agreement and in connection with the Security, the Paying Agent acts solely as agent of the Issuer and (to the extent provided therein) the Trustee and does not assume any obligations towards or relationship of agency or trust for or with the Security Holder. The Paying Agent is entitled to be indemnified and relieved from certain responsibility in certain circumstances as set out in the Paying 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 Paying Agent

and to appoint a successor Paying Agent or additional or successor other Paying Agents. Notice of any change in any of the Paying Agent or in their Specified Offices shall promptly be given to the Security Holder.

#### **18. Paying Agent not Liable**

In carrying out its functions under these Conditions the Paying Agent will rely conclusively upon information (including for the avoidance of doubt any account information or details) given to it by the Portfolio Manager or the Issuer without making any, searches, investigations or enquiries or incurring any liability whatsoever or howsoever arising for doing so, except in the case of its own wilful default, gross negligence, bad faith, fraud or that of its officers, directors or employees. Without prejudice to the generality of the foregoing, under no circumstances shall the Paying Agent be obliged to verify the contents or authenticity of any information received by it from the Portfolio Manager or the Issuer or verify or investigate whether or not the Security Holder identified to it by the Issuer to whom payment of any Periodic Return or Paid Up Amount is to be made holds title to or has the right to receive such amounts. For the avoidance of doubt each Security Holder identified by the Issuer to the Paying Agent shall be treated by the Paying Agent as holder of the Security and provided the Paying Agent makes payments of the Periodic Return or Paid Up Amount in accordance with these Conditions and the Paying Agency Agreement it shall not incur any liability whatsoever or howsoever arising for doing so, except in the case of its own wilful default, gross negligence, bad faith, fraud or that of its officers, directors or employees.

#### **19. Governing Law**

##### **(a) Governing Law**

The Trust Deed, the Security and all relationships created by thereby and arising therefrom, together with all disputes arising between the parties thereto or any of them (including any dispute arising out of any non-contractual obligations of any nature and those to which Regulation (EC) No. 864/2007 applies) will in all respects be governed by and construed in accordance with Irish law.

##### **(b) Jurisdiction**

The courts of Ireland are to have jurisdiction to settle any disputes (including any dispute arising out of any non-contractual obligations or any nature and those to which Regulation (EC) No. 864/2007 applies) (a "**Dispute**") which may arise out of or in connection with the Security and accordingly any legal action or proceedings arising out of or in connection with the Security ("**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 Holder 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).

#### **20. Limited Recourse and Non Petition**

The Security Holder will have recourse only to the Net Recourse Assets. The obligation of the Issuer to make payments in respect of the Security will be limited to such amounts received in respect of the Net Recourse Assets, after payment of all Senior Obligations, and the Security Holder will have no further recourse to the Issuer in respect of its payment obligation under the Security. Once the proceeds of the Net Recourse Assets have been distributed to the creditors of the Issuer (including the Security Holder), neither the Security Holder nor anyone acting on its 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 Holder 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 Company under the Security (including any additional or further Security issued) are discharged in full, the Security Holder (nor any other person acting on its 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 Security 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 Security are US\$17,000,000 (the "**Initial Proceeds**") and have been applied to acquire the Portfolio Assets.

It is expected that the Issuer will raise up to USD2,000,000,000 in aggregate from time to time following issuance of the Security provided that the Security Holder complies 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 a Trading Account. Amounts standing to the credit of such Trading Account will be withdrawn, in whole or part, by the Issuer and used to purchase Portfolio Assets (see "The Portfolio - Description of the Portfolio Assets" and "The Portfolio – Trading Account").

## THE ISSUER

The Issuer is a private company incorporated under the Irish Companies Acts, 1963 to 2009 on 10 January 2011 with registered number 493480. The registered office of the Issuer is Bracetown Business Park, Clonee, County Meath and its telephone number is + 353 1 8772740. 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 Security, 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 for the purpose of acquiring the Portfolio, issuing the Security and entering into the Transaction Documents.

The Issuer will covenant to observe certain restrictions on its activities which are detailed in Condition 3 of the Security 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 “financial 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 paragraph (i) above); 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.

Since its date of incorporation, the Issuer has conducted no business other than as detailed in the section “Trading History” below and negotiating and entering into the Transaction Documents.

### Capital Stock and Ownership

The authorised share capital of the Issuer is €1,000 and is divided into 1,000 shares of €1 each, 1000 of which shares are issued and are fully paid up. 700 of the shares are legally and beneficially held by FCCD Limited with the remaining 300 shares held legally by Deutsche International Finance (Ireland) Limited (the “**Share Trustee**”) under the terms of a declaration of trust (the “**Share Trust Agreement**”) dated 14 January 2011 under which the Share Trustee holds the benefit of the shares on trust for charitable



purposes. The Share Trustee has no beneficial interest in and derives no benefit from its holding of the shares. Other than the increase in the Issuer's issued share capital from 1 share to 1000 shares on 13 January 2011 there has been no material change in the capitalisation of the Issuer since 10 January 2011 being the date of its incorporation.

## **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:

Tony Traynor, Managing Director	Bracetown Business Park, Clonee, Co. Meath, Ireland.
Constantine Dakolias, Director	1345 Avenue of the Americas, 46th Floor, New York, NY 10105, USA.
Sean McKinley, Director	Bracetown Business Park, Clonee, Co. Meath, Ireland.

## **Independent Auditors**

The independent auditors of the Issuer are Ernst & Young, 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 period began on the date of incorporation of the Issuer and terminated on 31 December 2011. The Issuer does not prepare interim financial information.

## **Share Capital**

The Issuer has 1000 ordinary shares of €1 each in issue, all of which are fully paid up.

## **Shareholders**

The shareholders of the Issuer are FCOF III UB Securities LLC and the Share Trustee. FCOF III UB Securities LLC is a limited liability company formed under the laws of Delaware. The Share Trustee is described above in "Capital Stock and Ownership". As a matter of Irish company law, the directors of the Issuer are at all times required to act independently in the interests of the Issuer to promote its success to the exclusion of all other interests, including those of FCOF III UB Securities LLC.

## **Trading History**

From its incorporation, to 14 January 2011 the Issuer has engaged in the following activities: (i) the authorisation and issuance of the Security to the Initial Purchaser; (ii) the acquisition of a participation a bond issued by an automotive manufacturer; and (iii) the appointment of a portfolio manager for purposes of managing the assets of the Issuer. The audited financial statements of the Issuer for the financial period ended 31 December 2011 are expected to be published in May 2012.

## THE PORTFOLIO MANAGER

Fortress Credit Opportunities III Advisors LLC (the “**Portfolio Manager**”), a Delaware U.S., limited liability company and an affiliate of Fortress Investment Group LLC (“**Fortress**”), is the Portfolio Manager of the Portfolio. In such capacity, the Portfolio Manager provides the Issuer with certain services in return for the Management Fee (each as defined below) and the Portfolio Manager (or its agents) acts in the capacity of agent of the Issuer in respect of services provided in return for the Management Fee. (See “**Management Fee**” and “**Expenses**”). In particular, the Portfolio Management Agreement provides for the delegation of the management of the Portfolio to the Portfolio Manager by the Issuer, subject to the Issuer’s overall supervision (see “Dependence on Portfolio Manager” and “Ability of Issuer to Meeting its Obligations under the Security”).

## THE PORTFOLIO MANAGEMENT AGREEMENT

The portfolio management functions described herein will be subject to the terms of, and will be 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 will act on behalf of the Issuer in relation to the composition and management of the Portfolio.

### **Management Fee**

The Issuer will pay the Portfolio Manager a quarterly fee (paid proportionately in respect of periods of less than a full fiscal quarter) equal to the lower of (i) 1.5 per cent per annum of the aggregate acquisition amounts paid by the Issuer for the Portfolio Assets, adjusted for any write-downs, write-offs or subsequent write-ups (but, in the case of write-ups, limited to the amounts previously written down or written off), plus aggregate Issuer expenses, less any amounts realised by the Issuer as a recovery of the purchase price of such Portfolio Assets and (ii) USD200,000. Payment of the first Management Fee was made with respect to the Financial Period ending on 31 December 2011

### **Expenses**

Subject to the following sentence, the Portfolio Manager may, in its discretion, retain the services of professional advisors (including, without limitation, legal counsel, investment bankers 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 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, the rent and utilities for the facilities provided, computer equipment (including items used to send, receive and process information electronically); software, and secretarial, clerical and other personnel to the Issuer, except as specifically assumed by the Issuer under the Portfolio Management Agreement and except as paid for through the permitted use of “soft dollars.”

### **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 Security and all other amounts owing to the Security Holder 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 Security Holder. 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 90 days’ prior written notice by the Trustee acting upon the direction of the Security Holder. 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 the Security Holder):

- (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 Holder 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 Holder;
- (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 Security 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 without cause upon 30 days’ written notice to the Issuer or with cause, upon 10 days’ written notice to the Issuer, in each case copied to the Trustee.

**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**” will mean 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 Security, (iv) has regulatory capacity to conduct its securities business with Irish Residents, (v) such appointment has been notified to the Security Holder 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 Security Holder may select an Eligible Successor to be appointed as the replacement Portfolio Manager and issue a Written Direction to the Issuer and the Trustee to effect such appointment.

#### **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 Security Holder; provided, however, that, notwithstanding the foregoing, the Portfolio Manager will be permitted to assign any or all of its rights and delegate any or all of its obligations under the Portfolio Management Agreement, without any consents, to any person that is connected (within the meaning of s.839 of the United Kingdom Income and Corporation Taxes Act 1988) provided such person (A) has demonstrated an 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 and (C) performs its obligations under the Portfolio Management Agreement using substantially the same team of individuals that would have performed such obligations had the assignment not occurred; provided, that any corporation, partnership or limited liability company into which the Portfolio Manager may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Portfolio Manager shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the portfolio management business of the Portfolio Manager and otherwise satisfying the requirements of clauses (A), (B) and (C) above, shall be the successor to the Portfolio Manager without further action by the Portfolio Manager, the Issuer or the Security Holder or any other person or entity.

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**

To the fullest extent permitted by applicable law, the Portfolio Manager shall not have any duty to the Issuer (or any Investor) (including fiduciary duties) except as expressly set forth in the Portfolio Management Agreement. To the fullest extent permitted by applicable law and notwithstanding any other provision of the Portfolio Management Agreement, the Issuer agrees that none of (i) the Portfolio Manager, any consultant and the affiliates of the Portfolio Manager or any consultant, (ii) the officers, directors, members, principals, shareholders, controlling Persons, representatives, partners, managers, employees, agents, affiliates and assigns of any Person in item (i) above, and (iii) any employee, officer and agent of the Issuer (each, an “**Indemnified Party**”) shall be liable to the Issuer or to any Investor for any loss, cost, expense, claims, judgment, damages, settlement cost, fee and related expenses (including attorneys' fees and expenses) (“**Losses**”) in respect of arising from or in connection with (a) any actual or alleged act or omission to act performed or omitted by any of them in connection with the Portfolio Management Agreement, the Trust Deed or the Issuer's business or affairs (including any transactions described in the Listing Particulars, the Trust Deed or the Portfolio Management Agreement) or any Portfolio Asset or the Security, except for any such Losses determined by a judgment of a court of competent jurisdiction to have been primarily attributable to such Indemnified Party's Disabling Conduct or (b) any untrue statement or alleged untrue statement of a material fact contained in the Listing Particulars, or any omission or alleged omission to state a material fact necessary to make the statements in the Listing Particulars, in light of the circumstances under which they were made, not misleading. No Indemnified Party shall be liable to the Issuer or to any Investor for Losses due to any actual or alleged act or omission to act of any broker, agent, counsel or accountant so long as the selection, engagement or retention of such broker, agent, counsel or accountant did not constitute Disabling Conduct. An Indemnified Party may consult with counsel and accountants and will be fully protected and justified in any actual or alleged act or omission to act which is taken in accordance with the advice or opinion of such counsel or accountants so long as the selection, engagement or retention of such counsel or accountant did not constitute Disabling Conduct. Nothing in this paragraph shall be construed to imply that an Indemnified Party

is liable to the Issuer or to any Investor for any Loss by virtue of the Disabling Conduct exception to such Indemnified Party's rights of exculpation hereunder. "**Disabling Conduct**" shall mean, with respect to an Indemnified Party, an act or omission by such Indemnified Party that constitutes gross negligence (as determined in accordance with the laws of the State of Delaware), recklessness, wilful misconduct or bad faith.

The Issuer, out of its own assets and not out of the assets of any Investor, shall to the fullest extent permitted by applicable law, indemnify and hold harmless each Indemnified Party against any Losses sustained by an Indemnified Party in respect of arising from or in connection with (a) any actual or alleged act or omission to act performed or omitted by such Indemnified Person in connection with any matter arising out of or in connection with the Portfolio Management Agreement, the Trust Deed or the Issuer's business or affairs (including any transactions described in the Listing Particulars, the Trust Deed or the Portfolio Management Agreement) or any Portfolio Asset or the Security except for any such Losses determined by a judgment of a court of competent jurisdiction to have been primarily attributable to such Indemnified Party's Disabling Conduct, (b) any actual or alleged act or omission to act of any broker, agent, counsel or accountant so long as the selection, engagement or retention of such broker, agent, counsel or accountant did not constitute Disabling Conduct, and (c) any untrue statement or alleged untrue statement of a material fact contained in the Listing Particulars, or any omission or alleged omission to state a material fact necessary to make the statements in the Listing Particulars, in light of the circumstances under which they were made, not misleading. The Issuer shall, (i) in the discretion of the Portfolio Manager, advance to each Indemnified Party, or (ii) promptly reimburse each Indemnified Party for, all expenses (including fees and expenses of counsel) incurred in connection with investigating, preparing, pursuing or defending any proceeding related to, arising out of or in connection with the Portfolio Management Agreement or the Issuer's business or affairs; *provided* that such Indemnified Party shall promptly repay to the Issuer the amount of any such advanced or reimbursed expenses paid to it if it shall be judicially determined by judgment or order not subject to further appeal or discretionary review that such Indemnified Party is not entitled to be indemnified under the terms of the Portfolio Management Agreement. If for any reason (other than such Indemnified Party's Disabling Conduct), the foregoing indemnification is unavailable to any Indemnified Party, or insufficient to hold it harmless, then the Issuer shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage, liability or expense in such proportion as is appropriate to reflect the relative benefits received by the Issuer, on the one hand, and such Indemnified Party on the other hand or, if such allocation is not permitted by applicable law, to reflect not only the relative benefits referred to above but also any other relevant equitable considerations.

An Indemnified Party shall not be liable to the Issuer (i) for breach of fiduciary duty or (ii) for any act or the failure to act on behalf of the Issuer, if it has relied in good faith on the provisions of the Portfolio Management Agreement to the fullest extent permitted by applicable law.

The rights accruing to any Indemnified Party under these provisions shall not exclude any other right to which such Indemnified Party may be lawfully entitled and shall survive the termination of the Portfolio Management Agreement.

## THE PORTFOLIO

### Description of the Portfolio Assets

#### General

The investment objective of the Issuer is to generate long term capital appreciation, and from time to time, current income by acquiring a portfolio (the “**Portfolio**”) of loans and asset-backed securities (which may include performing, distressed or undervalued residential loans and securities, commercial mortgage loans and securities, opportunistic corporate loans and securities, and other consumer or commercial assets and asset-backed securities) (“**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 Security out of the net proceeds of the issue of the Security 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 “financial 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) residential performing, sub-performing or non-performing loans and securities, as well as residential real properties;
  - (ii) 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; and
  - (iii) other stressed, distressed and out of favour credits, including commercial and corporate loans and asset-backed securities, as well as derivatives and indices relating to any of the foregoing.

The Issuer may also trade 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. Finally, the Issuer may pursue investments outside of the categories described above to take advantage of prevailing market conditions. The Issuer confirms that no more than 10% of the Portfolio will comprise of unlisted equity securities.

The Issuer expects to invest primarily in North America and Western Europe, but may also invest in Australia, Asia and 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 Security 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 or in the acquisition of Eligible Investments.

## **Synthetic Securities**

Pursuant to the Portfolio Management Agreement, the Portfolio Manager, acting on behalf of the Issuer, may from time to time acquire Portfolio Assets which are Synthetic Securities.

As part of the acquisition or entry into of a Synthetic Security which is an unfunded credit default transaction, the Issuer or the Portfolio Manager, acting on the Issuer's behalf, will be required to provide collateral to the applicable counterparty ("**Synthetic Collateral**") the principal amount of which is not less than 100 per cent. of the notional amount of such credit default transaction which it will deposit in a Trading Account as security for its payment obligations to such counterparty under the Synthetic Security. Subject as provided below, the Issuer may purchase such Synthetic Collateral notwithstanding that it may not satisfy the Selection Criteria. For the purposes of the Portfolio Management Agreement, the purchase price of any Portfolio Asset that is a Synthetic Security shall include the principal amount of any Synthetic Collateral required to be posted.

## **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. 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) may manage the Portfolio Assets actively, and over time, may substantially alter asset allocations to take advantage of market opportunities as they occur.

## **Reports**

The Issuer will make available its audited annual financial statements, upon the request of any existing holders of the Security who have identified themselves as being existing holders of the Security and, if and to the extent required, have provided reasonable evidence to the effect that they are holders of the Security 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: Tony Traynor, Bracetown Business Park, Clonee, Co. Meath, Ireland, Fax Number: + 353 1 877 2750.

## **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).

### **Securities Lending Agreements**

The Issuer, may from time to time lend or pledge its interest in the Portfolio, or any part thereof ("**Lent Assets**"), to third parties pursuant to a securities lending agreement (a

**“Security Lending Agreement”**) for a commission or fee. Upon completion of a Securities Lending Agreement, the Issuer may cease, for the period of the lending transaction, to benefit from any income generated by the interest in the Lent Assets.

### **Repurchase Agreements**

The Issuer, may from time to time sell its interest in the Portfolio Assets, or any part thereof (**“Repo’d Assets”**), to third parties pursuant to a repurchase agreement (a **“Repurchase Agreement”**) for a commission or fee. Upon completion of a Repurchase Agreement, the Issuer may cease, for the period of the lending transaction, to benefit from any income generated by the interest in the Repo’d Assets.

### **Trading Accounts**

The Issuer will open and maintain one or more accounts with Trading Accounts Bank each designated a “Trading Account”. All Deferred Proceeds will be credited to a Trading Account. The Issuer is entitled, at its discretion, to withdraw funds standing to the credit of a Trading Account, pursuant to the relevant Trading Accounts Agreement. The Portfolio Manager may, from time to time, direct a Trading Accounts Bank, pursuant to the terms of the relevant Trading Accounts Agreement, to release funds for investments by the Issuer in financial instruments or for lending by the Issuer to the shareholders of the Issuer (**“Eligible Investments”**) or to release funds to the Expense Account 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 or such Eligible Investments) 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 or Eligible Investments) shall be credited to a Trading Account for reinvestment in Portfolio Assets or Eligible Investments or for application towards Periodic Return Payments or payments of Paid-Up Amount of the Security.

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

### 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 Security is quoted on a recognised stock exchange and the payments on which are made by or through a paying agent that is not located in Ireland, interest on the Security 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 Security 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 in a "relevant territory" (i.e. a member state of the European Union (other than Ireland) or in a country with which Ireland has signed a double taxation agreement). 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.

In certain circumstances, Irish tax will be required to be withheld at the standard rate from interest on any Quoted Eurobond, where such amount is collected by a bank in Ireland on behalf of any Security Holder who is resident in Ireland.

### **Taxation of Security Holder**

Notwithstanding that a Security Holder may receive interest on the Security free of withholding tax, the Security Holder may still be liable to pay Irish income tax. Interest paid on the Security may have an Irish source and therefore be within the charge to Irish income tax and levies. 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 Security will be exempt from Irish income tax if the recipient of the interest is resident in a relevant territory provided either (i) the Security is a quoted Eurobonds and is exempt from withholding tax as set out above (ii) in the event of the Security not being or ceasing to be quoted Eurobond exempt from withholding tax, if the Issuer is a qualifying company within the meaning of Section 110 of the 1997 Act, or (iii) if the Issuer has ceased to be a qualifying company, the recipient of the interest is a company.

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 Security is held or attributed, may have a liability to Irish corporation tax on the interest.

Interest on the Security which does not fall within the above exemptions may be within the charge to Irish income tax.

### **Stamp Duty**

No stamp duty or similar tax is imposed in Ireland on the issue (on the basis of an exemption provided for in Section 85(2)(c) to the Stamp Duties Consolidation Act 1999 provided the proceeds of the Security are used in the course of the Issuer's business), transfer or redemption of the Security whether it is represented by Global Securities or Definitive Certificates.

### **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.

In November, 2008 the European Commission proposed that a number of changes be made to the directive following a report on its operation since adoption. If any of these changes are adopted they are likely to broaden the scope of the directive.

## SUBSCRIPTION

Pursuant to a Subscription Agreement dated the Closing Date, subscription by FCCD Limited (the “**Initial Purchaser**”) for USD2,000,000,000 in Stated Amount of the Security in consideration for the 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 Security.

### **Selling Restrictions**

#### ***United States of America***

The Security has 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 Security 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 Purchaser has agreed that the Security has been subscribed for on terms that:

- (a) the Security Holder is a qualified investor (within the meaning of section 86 (7) of the Financial Services and Markets Act 2000) (the “**FSMA**”);
- (b) the Security Holder has not offered or sold and will not offer to sell any Security 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) the Security 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 Security in circumstances in which Section 21 (1) of the FSMA does not apply to the Issuer;
- (d) the Security Holder has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Security in, from or otherwise involving the United Kingdom.

#### ***Republic of Ireland***

The Initial Purchaser has agreed that the Security has been subscribed for on terms that:

- (a) it will not underwrite the issue of, or place the Security, otherwise than in conformity with the provisions of the Irish European Community (Markets in Financial Instruments) Regulations, 2007 (Nos. 1 to 3) including, without limitation, Regulations 7 and 152 thereof or any codes of conduct issued in connection therewith, and the provisions of the Investor Compensation Act 1998;
- (b) it will not underwrite the issue of, or place, the Security, otherwise than in conformity with the provisions of the Irish Central Bank Acts 1942 – 2010 (as amended) and any codes of conduct rules made under Section 117(1) of the Central Bank Act, 1989;
- (c) it will not underwrite the issue of, or place, or do anything in Ireland in respect of the Notes otherwise than in conformity with the provisions of the Irish Prospectus (Directive 2003/71/EC) Regulations 2005, the Irish Companies Acts 1963 to 2009

and any rules issued under Section 51 of the Irish Investment Funds, Companies and Miscellaneous Provisions Act 2005 by the Central Bank; and

- (d) it will not underwrite the issue of, place or otherwise act in Ireland in respect of the Security, otherwise than in conformity with the provisions of the Irish Market Abuse (Directive 2003/6/EC) Regulations 2005 and any rules issued under Section 34 of the Irish Investment Funds, Companies and Miscellaneous Provisions Act 2005 by the Central Bank.

## **GENERAL INFORMATION**

### **1. Listing**

Application has been made to the Irish Stock Exchange for the Security 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.

### **2. ISIN Code**

The ISIN code of the Security is IE00B4PLDV75.

### **3. 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 Security. The issue of the Security was authorised by a resolution of the Board of Directors of the Issuer passed on 14 January 2011.

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

Save as disclosed in this Listing Particulars, there has been no material adverse change in the financial or trading position or prospects of the Issuer since 31 December 2011 (such date being the date of the Issuer's last audited financial statements). Since its incorporation, the Issuer has not entered into any transactions or established or created any accounts save as described in this Listing Particulars.

### **5. 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.

### **6. No Material Contracts**

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

### **7. 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.

### **8. 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 Agents during normal business hours. The first financial statements of the Issuer in respect of the period from incorporation to 31 December 2011 are expected to be published in May 2012.

### **9. Documents Available**

For so long as any Security remains 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 Security);
- (c) from May 2012, financial statements of the Issuer in respect of the period from incorporation to 31 December 2011.
- (d) any future information memoranda, prospectuses, offering circulars and supplements.

The Issuer does not intend to provide post-issuance information on the Security nor on the Portfolio Assets.

### **THE ISSUER**

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Clonee,  
County Meath,  
Ireland

### **TRUSTEE**

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United Kingdom

### **PAYING AGENT**

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### **PORTFOLIO MANAGER**

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### **LEGAL ADVISERS**

*To the Trustee and the Paying Agent*

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*To the Issuer and the Portfolio Manager*

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Ireland

### **AUDITORS TO THE ISSUER**

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Ireland

### **LISTING AGENT**

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