

BASE PROSPECTUS
Morgan Stanley Secured Financing LLC

(a limited liability corporation incorporated in Delaware in the United States of America)

U.S.\$5,000,000,000

Collateralised Funding Programme

guaranteed by

Morgan Stanley

as Guarantor

(incorporated under the laws of the State of Delaware in the United States of America)

Morgan Stanley Secured Financing LLC, a limited liability corporation incorporated in Delaware having its registered office at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, U.S.A. (the **Issuer**) may from time to time issue Notes under its U.S.\$ 5,000,000,000 Collateralised Funding Programme (the **Programme**). Notes will be issued to Morgan Stanley & Co. International plc, the Arranger and Dealer specified below, or to such other person or persons appointed as a dealer for a specific Series of Notes (each a **Dealer** and together the **Dealers**). Such Notes may be denominated in any currency agreed between the Issuer and any relevant Dealer(s) as specified in the applicable Final Terms (as defined below).

The maximum aggregate nominal amount of all Notes from time to time outstanding and that the Issuer is permitted to incur will not exceed U.S.\$5,000,000,000 (or its equivalent in other currencies), subject to increase from time to time.

This Base Prospectus has been prepared for use only in connection with Notes issued by the Issuer.

In order to secure its obligations under the Notes, the Issuer will grant to BNY Mellon Corporate Trustee Services Limited as the trustee (the **Trustee**) on behalf of the Noteholders security, *inter alia*, over the Collateral Assets (as defined below). The Notes of each Series will also have the benefit of a guarantee from Morgan Stanley (in such capacity, the **Guarantor**) pursuant to a guarantee in respect of such Series (each such guarantee, the **Guarantee**).

The Notes and the Guarantee thereof have not been and will not be registered under the United States Securities Act of 1933, as amended (the **Securities Act**), or the securities laws of any state of the United States and the Issuer of the Notes has not been and will not be registered under the United States Investment Company Act of 1940, as amended (the **Investment Company Act**). The Notes will be offered, sold and delivered only outside of the United States to persons that are not "U.S. persons" as defined in Regulation S (**Regulation S**) under the Securities Act (such persons, **U.S. Persons**) in compliance with Regulation S and only to **Eligible Purchasers**. **Eligible Purchaser** means an investor who is (i) a non-U.S. Person (as defined in Regulation S), (ii) a "qualified institutional buyer" (as defined in Rule 144A) (**QIBs**) and (iii) a "qualified purchaser" as defined in Section 2(a)(51)(A) of the Investment Company Act of 1940 and the rules thereunder (**QP**). Interests in the Notes will be subject to certain restrictions on transfer, and each purchaser of Notes offered hereby in making its purchase will be deemed to have made certain acknowledgements, representations and agreements. See "*Subscription and Sale and Transfer Restrictions*" and "*No Ownership by U.S. Persons*". The Notes are being offered by the Issuer through the Dealer(s) subject to prior sale, when, as and if delivered to and accepted by the Dealer, and to certain conditions. It is expected that delivery of the Notes will be made on or about each Issue Date.

The Base Prospectus has been approved by the Central Bank of Ireland (the **Central Bank**), as competent authority under Directive 2003/71/EC (the **Prospectus Directive**) as amended (which includes the amendments made by Directive 2010/73/EU (the **2010 PD Amending Directive**) to the extent that such amendments have been implemented in a relevant Member State of the European Economic Area). The Central Bank only approves this Base Prospectus as meeting the requirements imposed under Irish and EU law pursuant to the Prospectus Directive. Such approval relates only to the Notes which are to be admitted to trading on the regulated market of the Irish Stock Exchange or other regulated markets for the purposes of Directive 2004/39/EC or which are to be offered to the public in any member state of the European Economic Area (the **EEA**). Application has been made to the Irish Stock Exchange (the **Irish Stock Exchange**) for Notes to be admitted to the Official List (the **Official List**) and trading on its regulated market. However, Notes may also be issued pursuant to the Programme which will not be listed on the Irish Stock Exchange or any other stock exchange or which will be listed on such stock exchange as the Issuer and the Dealer may agree. The relevant Final Terms in respect of any Series will specify whether or not the relevant Notes will be listed on the Irish Stock Exchange (or whether the relevant Securities will be listed on any other stock exchange). This document constitutes a "Base Prospectus" for the purposes of the Prospectus Directive and the Prospectus (Directive 2003/71/EC) Regulations 2005 (the **Prospectus Regulations**).

The Central Bank in its capacity as competent authority has only approved this Base Prospectus in relation to Notes which are to be listed on the Irish Stock Exchange or any other EU Regulated Market and the Central Bank has neither reviewed nor approved this Base Prospectus in relation to any unlisted Notes. This Base Prospectus has been filed with and approved by the Central Bank as required by the Prospectus Regulations.

References in this Base Prospectus to Notes being **listed** in Ireland (and all related references) shall mean that such Notes have been admitted to trading on the Irish Stock Exchange's regulated market and have been listed on the Irish Stock Exchange. References in this Base Prospectus to "**Irish Stock Exchange**" (and all related references) shall mean the regulated market of the Irish Stock Exchange.

The Programme provides that the Notes may be listed on such other or further stock exchange or stock exchanges (other than in respect of an admission to trading on any market in the European Economic Area (the **EEA**) which has been designated as a regulated market for the purposes of the Prospectus Directive) as may be agreed between the Issuer and the relevant Dealer. The Issuer may also issue unlisted Notes or Notes not admitted to trading on any market.

Copies of this Base Prospectus will be available at the specified office set out below of the Issuer and the Paying Agent(s) (as defined herein).

Notes will be issued in registered form and will be represented by a Global Note as specified in the applicable Final Terms.

The Issuer may agree with any Dealer, the Arranger and the Trustee (as defined herein) that Notes may be issued in a form not contemplated by the Terms and Conditions of the Notes herein, in which event a supplement to this Base Prospectus, if appropriate, will be made available which will describe the effect of the agreement reached in relation to such Notes.

The Notes may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons and, furthermore, each purchaser must be an Eligible Purchaser (see "*Subscription and Sale and Transfer Restrictions*" on pages 111 to 118 and "*No Ownership by U.S. Persons*" on page 119).

Prospective investors should be aware of the risks involved in investing in the Notes (see "*Risk Factors*" on pages 25 to 55). The rating of certain Series of Notes to be issued under the Programme may be specified in the applicable Final Terms. Whether or not each credit rating applied for in relation to relevant Series of Notes will be issued by a credit rating agency established in the European Union and registered under Regulation (EC) No. 1060/2009 (as amended) (the **CRA Regulation**) will be disclosed in the Final Terms.

Morgan Stanley's ratings are issued by Standard & Poor's Financial Services LLC, Moody's Investors Service, Inc. and Fitch, Inc. Standard & Poor's Financial Services LLC is not incorporated in the European Union and it is not registered under the CRA Regulation. An application has been made for its ratings to be endorsed by Standard & Poor's Credit Market Services Europe Limited, a rating agency registered under the CRA Regulation. While notification of the corresponding final endorsement decision has not yet been provided by the relevant competent authority, the European Securities Markets Authority has indicated that ratings issued in third countries may continue being used in the EU by relevant market participants for a transitional period ending on 30 April 2012. Moody's Investors Service, Inc. is not established in the European Union and has not applied for registration under Regulation (EC) No. 1060/2009 (as amended) (the CRA Regulation). However, Moody's Investors Service disclosed in its press release of 14 June 2011 that it has sought authorisation to endorse the global scale credit ratings of Moody's Investors Service, Inc. through either Moody's Investors Service Ltd. or Moody's Deutschland GmbH, both of which are established in the European Union and are registered under the CRA Regulation. While notification of the corresponding final endorsement decision has not yet been provided by the relevant competent authority, the European Securities and Markets Authority has indicated that ratings issued in third countries may continue to be used in the EU by relevant market participants for a transitional period ending on 30 April 2012. Fitch, Inc. is not established in the European Union and has not applied for registration under Regulation (EC) No. 1060/2009 (as amended) (the CRA Regulation). However, the application for registration under the CRA Regulation of Fitch Ratings Ltd., which is established in the European Union and is registered under the CRA Regulation, disclosed the

intention to endorse credit ratings of Fitch, Inc. While notification of the corresponding final endorsement decision has not yet been provided by the relevant competent authority, the European Securities Markets Authority has indicated that ratings issued in third countries may continue being used in the EU by relevant market participants for a transitional period ending on 30 April 2012.

The Notes are not bank deposits and are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other governmental agency, nor are they obligations of, or guaranteed by, a bank.

Arranger and Dealer

Morgan Stanley & Co. International plc

The date of this Base Prospectus is 20 March 2012.

Capitalised terms used in this Base Prospectus but not defined herein shall have the meanings given to them in the Terms and Conditions of the Notes on page 56, or as the as the case may be, in the applicable Final Terms.

The Issuer (the **Responsible Person**) accepts responsibility for the information contained in this Base Prospectus. To the best of the knowledge and belief of the Issuer (having taken all reasonable care to ensure that such is the case) the information contained in this Base Prospectus is in accordance with the facts and does not omit anything likely to affect the import of such information. The Guarantor also accepts responsibility for the information in the section entitled "*Description of the Guarantor*", all information regarding the Guarantee in this Base Prospectus including in the section entitled "*Form of the Guarantee*" and the information incorporated by reference relating to the Guarantor in the section entitled "*Documents Incorporated by Reference*". To the best of the knowledge and belief of the Guarantor (having taken all reasonable care to ensure that such is the case) the information contained in the section entitled "*Description of the Guarantor*", all information regarding the Guarantee in this Base Prospectus and in the section entitled "*Form of the Guarantee*" and the information incorporated by reference relating to the Guarantor in the section entitled "*Documents Incorporated by Reference*" is in accordance with the facts and does not omit anything likely to affect the import of such information.

Subject as provided in the applicable Final Terms, the only persons authorised to use this Base Prospectus in connection with an offer of Notes are the persons named in the applicable Final Terms as the relevant Dealer or the Arranger, as the case may be.

This Base Prospectus is to be read in conjunction with all documents which are deemed to be incorporated herein by reference (see "*Documents Incorporated by Reference*"). This Base Prospectus shall be read and construed on the basis that such documents are incorporated and form part of this Base Prospectus.

None of the Trustee, the Arranger or any Dealer has or will have separately verified the information contained herein. Accordingly, no representation, warranty or undertaking, express or implied, is or will be made and no responsibility or liability is or will be accepted by the Trustee, the Arranger or any Dealer as to the accuracy or completeness of the information contained in this Base Prospectus or any other information provided by the Issuer in connection with the Programme. The statements made in this paragraph are made without prejudice to the responsibility of the Issuer under the Programme.

No person is or has been authorised by the Issuer, the Guarantor, the Sellers, the Arranger, any Dealer or the Trustee to give any information or to make any representation not contained in or not consistent with this Base Prospectus or any other information supplied in connection with the Programme or the Notes and, if given or made, such information or representation must not be relied upon as having been authorised by the Issuer, the Guarantor, the Sellers, the Arranger, any of the Dealer(s) or the Trustee.

Neither this Base Prospectus nor any other information supplied in connection with the Programme or any Notes (a) is intended to provide the basis of any credit or other evaluation or (b) should be considered as a recommendation by the Issuer, the Guarantor, the Sellers, the Arranger, any of the Dealer(s) or the Trustee that any recipient of this Base Prospectus or any other information supplied in connection with the Programme or any Notes should purchase any Notes. Each investor contemplating purchasing any Notes should make its own independent investigation of the financial condition and affairs, and its own appraisal of the creditworthiness, of the Issuer and the Guarantor. Neither this Base Prospectus nor any other information supplied in connection with the Programme or the issue of any Notes constitutes an offer or invitation by or on behalf of the Issuer, the Guarantor, the Sellers, the Arranger, any of the Dealers or the Trustee to any person to subscribe for or to purchase any Notes.

Neither the delivery of this Base Prospectus nor the offering, sale or delivery of any Notes shall in any circumstances imply that the information contained herein concerning each of the Issuer and the Guarantor is correct at any time subsequent to the date hereof or that any other information supplied in connection with

the Programme is correct as of any time subsequent to the date indicated in the document containing the same. The Dealer(s), the Arranger and the Trustee expressly do not undertake to review the financial condition or affairs of the Issuer or the Guarantor during the life of the Programme or to advise any Noteholder of any information coming to their attention.

This Base Prospectus does not constitute an offer to sell or the solicitation of an offer to buy any Notes in any jurisdiction to any person to whom it is unlawful to make the offer or solicitation in such jurisdiction. The distribution of this Base Prospectus and the offer or sale of Notes may be restricted by law in certain jurisdictions. The Issuer, the Guarantor, the Sellers, the Trustee, the Arranger and the relevant Dealer(s) do not and will not represent that this Base Prospectus may be lawfully distributed, or that the Notes may be lawfully offered, in compliance with any applicable registration or other requirements in any such jurisdiction, or pursuant to an exemption available thereunder, or assume any responsibility for facilitating any such distribution or offering. In particular, no action has been or will be taken by the Issuer, the Guarantor, the Sellers, the Trustee, the Arranger or any Dealer(s) (save as specified in the applicable Final Terms) which would permit a public offering of the Notes outside the European Economic Area or distribution of this Base Prospectus in any jurisdiction where action for that purpose is required. Accordingly, the Notes may not be offered or sold, directly or indirectly, and neither this Base Prospectus nor any advertisement or other offering material may be distributed or published in any jurisdiction, except under circumstances that will result in compliance with any applicable laws and regulations. Persons into whose possession this Base Prospectus or any Notes come must inform themselves about, and observe, any such restrictions. In particular, there are restrictions on the distribution of this Base Prospectus and the offer or sale of Notes in the United States and the European Economic Area (including the United Kingdom) (see "*Subscription and Sale and Transfer Restrictions*" on pages 111 to 118 below).

This Base Prospectus does not constitute an offer to sell or the solicitation of an offer to buy any securities in the People's Republic of China (excluding Hong Kong, Macau and Taiwan, the **PRC**) to any person to whom it is unlawful to make the offer or solicitation in the PRC.

The Issuer does not represent that this Base Prospectus may be lawfully distributed, or that any Notes may be lawfully offered, in compliance with any applicable registration or other requirements in the PRC, or pursuant to an exemption available thereunder, or assume any responsibility for facilitating any such distribution or offering. In particular, no action has been taken by the issuer which would permit a public offering of any Notes or distribution of this document in the PRC. Accordingly, the Notes are not being offered or sold within the PRC by means of this Base Prospectus or any other document. Neither this Base Prospectus nor any advertisement or other offering material may be distributed or published in the PRC, except under circumstances that will result in compliance with any applicable laws and regulations.

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

Where the Issuer wishes to issue Notes with a maturity of less than one year, it shall ensure that the Notes are issued in accordance with an exemption granted under section 8(2) of the Central Bank Act, 1971, as amended. Furthermore, Notes having a maturity of less than one year will, if the proceeds of the issue are accepted in the United Kingdom, constitute deposits for the purposes of the prohibition on accepting deposits contained in section 19 of the Financial Services and Markets Act 2000 (the **FSMA**) unless they are issued to a limited class of professional investors and have a denomination of at least £100,000 or its equivalent in another currency.

All references in this Base Prospectus or any Final Terms to "**U.S. dollars**", "**U.S.\$**" and "**U.S. cents**" are to the currency of the United States of America, those to "**Sterling**", "**Pounds Sterling**", "**Pounds**" and "**£**" are to the currency of the United Kingdom and those to "**euro**" and "**€**" refer to the currency introduced at the

start of the third stage of European economic and monetary union pursuant to the Treaty on the Functioning of the European Union, as amended.

The Notes will be in registered form represented on issue by a global note in registered form (the **Global Note**) which will be deposited on or about the Issue Date with a common depository for Euroclear Bank S.A./N.V. (**Euroclear**) and Clearstream Banking, société anonyme (**Clearstream, Luxembourg**). Neither U.S. Persons nor persons in the United States may hold an interest in a Note. Ownership interests in the Notes will be shown on, and transfers thereof will only be effected through, records maintained by Euroclear, Clearstream, Luxembourg, and its respective participants. Notes in definitive certificated form will be issued upon request. In each case, purchasers and transferees of Notes will be deemed or required, as the case may be, to have made certain representations and agreements. See "*Terms and Conditions of the Notes*" and "*Subscription and Sale and Transfer Restrictions*" below.

The Issuer has not been and will not be registered under the Investment Company Act. Each purchaser of an interest in the Notes will be deemed to have represented and agreed that it is a non-U.S. Person, a QP and a QIB and will also be deemed to have made the representations set out in "*Subscription and Sale and Transfer Restrictions*" herein. The purchaser of any Note, by such purchase, agrees that such Note is being acquired for its own account and not with a view to distribution and may be resold, pledged or otherwise transferred only (1) to the Issuer (upon redemption thereof or otherwise) or (2) to a person the purchaser reasonably believes is an Eligible Purchaser, in each case, in compliance with the Trust Deed and all applicable securities laws of any state of the United States or any other jurisdiction. See "*Subscription and Sale and Transfer Restrictions*".

The language of this Base Prospectus is English. Certain legislative references and technical terms have been cited in their original language in order that the correct technical meaning may be ascribed to them under applicable law.

In making an investment decision, investors must rely on their own examination of the Issuer, the Guarantor and the Sellers and the terms of the Notes and the offering thereof described herein, including the merits and risks involved.

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DOCUMENTS INCORPORATED BY REFERENCE

The following documents and/or information shall be deemed to be incorporated in, and to form part of, this Base Prospectus, to the extent that, on or before the date of this Base Prospectus, they have been published and approved by or filed with the Central Bank or a competent authority:

Morgan Stanley

Document filed	Information incorporated by reference	Page	
1.	<p>Registration Document dated 10 June 2011 (the Registration Document). The Registration Document has been approved by the Financial Services Authority in its capacity as United Kingdom competent authority for the purposes of the Prospectus Directive.</p>	<p>The entire document with the exception of:</p> <ul style="list-style-type: none"> (a) documents and/or information incorporated by reference into the Registration Document by way of the section entitled "Information Incorporated by Reference" therein at pages 17-21; (b) the paragraphs under the heading "Scope of Permitted Activities" in the section entitled "Description of Morgan Stanley" at pages 23-24; (c) the section entitled "Description of Morgan Stanley & Co. International plc" at pages 57-61; (d) the section entitled "Selected Financial Information of Morgan Stanley & Co. International plc" at pages 62-64; (e) the section entitled "Description of Morgan Stanley (Jersey) Limited" at pages 65-67; (f) the section entitled "Description of Morgan Stanley B.V." at pages 68 -70; and (g) the section entitled "Subsidiaries of Morgan Stanley" at pages 71-99. 	-
Morgan Stanley			
2.	Current Report on Form 8-K dated 19 January 2012	Whole document	-
3.	Annual Report on Form 10-K for the year ended 31 December 2011	<ul style="list-style-type: none"> (a) Business Overview (b) Administrative, Management 	<ul style="list-style-type: none"> 1-7 7-17,

		and Supervisory Bodies	271
	(c)	Financial Information	
	(i)	Report of Independent Registered Public Accounting Firm	125
	(ii)	Consolidated Statements of Financial Condition	126-127
	(iii)	Consolidated Statements of Income	128
	(iv)	Consolidated Statements of Cash Flow	130
	(v)	Notes to the Consolidated Financial Statements	133-261
4.		Annual Report on Form 10-K for the year ended 31 December 2010	
	(a)	Business Overview	1-8
	(b)	Administrative, Management and Supervisory Bodies	8-22, 263
	(c)	Financial Information	
	(i)	Report of Independent Registered Public Accounting Firm	119
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	(v)	Notes to the Consolidated Financial Statements	127-251

For the purposes of Article 28.4 of Commission Regulation (EC) No 809/2004, any non-incorporated parts of a document referred to herein are either deemed not relevant for a Noteholder or are otherwise covered elsewhere in this Base Prospectus.

Any statement contained in this Base Prospectus or any documents incorporated by reference herein, shall be deemed to be modified or superseded for the purpose of this Base Prospectus to the extent that a statement contained in any document subsequently incorporated by reference and in respect of which a supplement to this Base Prospectus is prepared modifies or supersedes such statement.

The information about the Guarantor incorporated by reference in this Base Prospectus is considered to be part of this Base Prospectus. Following the publication of this Base Prospectus a supplement may be prepared by the Issuer or the Guarantor and approved by the Central Bank in accordance with Article 16 of the Prospectus Directive. Statements contained in any such supplement (or contained in any document incorporated by reference therein) shall, to the extent applicable (whether expressly, by implication or otherwise), be deemed to modify or supersede statements contained in this Base Prospectus or in a document which is incorporated by reference in this Base Prospectus. Any statement so modified or superseded shall not, except as so modified or superseded, constitute a part of this Base Prospectus.

The Issuer and the Guarantor will make available for inspection at their registered offices or principal office respectively, and at the specified offices of the Principal Paying Agent during normal business hours and free of charge and upon oral or written request, a copy of this Base Prospectus (or any document incorporated by reference in this Base Prospectus and any future filings or financial statements published by such Issuer or Guarantor, as the case may be). Written or oral requests for inspection of such documents should be directed to the specified office of the Principal Paying Agent.

Save as disclosed in this Base Prospectus, there has been no material change in the financial or trading position or recent development in respect of the Guarantor which is capable of affecting the assessment of any Notes since the date of the Registration Document. The Issuer and the Guarantor will, in the event of any significant new factor, material mistake or inaccuracy relating to information included in this Base Prospectus which is capable of affecting the assessment of any Notes, prepare a supplement to this Base Prospectus or publish a new Base Prospectus for use in connection with any subsequent issue of Notes.

SUMMARY OF THE PROGRAMME

The following overview does not purport to be complete and is taken from, and is qualified in its entirety by, the remainder of this Base Prospectus and, in relation to the terms and conditions of any particular Series of Notes, the applicable Final Terms. The Issuer, the Arranger and the Dealer may agree that Notes shall be issued in a form other than that contemplated in the Terms and Conditions, in which event, in the case of listed Notes only and if appropriate, a supplement to this Base Prospectus will be published.

This overview constitutes a general description of the Programme for the purposes of Article 22.5(3) of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive.

The Notes may not be offered, sold or delivered at any time, directly or indirectly, within the United States or to or for the account of U.S. Persons (as defined in Regulation S under the Securities Act). Notes will only be offered or sold to Eligible Purchasers. An Eligible Purchaser is an investor who is (i) a non U.S. Person (as defined in Regulation S), (ii) a "qualified institutional buyer" (as defined in Rule 144A) (QIBs) and (iii) a "qualified purchaser" as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 and the rules thereunder.

A. THE PROGRAMME

Issuer: Morgan Stanley Secured Financing LLC.

Description: U.S.\$5,000,000,000 Collateralised Funding Programme.

Risk Factors: There are certain factors which may be material or otherwise relevant for the purpose of assessing the risks associated with the Issuer, the Notes, the Collateral Assets, the relevant Guarantee or otherwise in relation to the Notes issued under the Programme. These are set out under "*Risk Factors*" below.

Arranger: Morgan Stanley & Co. International plc.

Dealer Morgan Stanley & Co. International plc.

Calculation Agent: Morgan Stanley & Co. International plc.

The Calculation Agent will determine, where relevant and in accordance with the relevant Conditions, the ISDA Rate, Rate of Interest and/or Interest Amounts in respect of each Series of Notes and will be appointed in respect of each Series of Notes pursuant to the relevant Agency Agreement relating to such Series of Notes.

The Issuer may, with the prior written approval of the Trustee, terminate the appointment of the Calculation Agent at any time and/or appoint additional or other Calculation Agents by giving to the Calculation Agent at least 30 days' prior written notice to that effect, provided that, so long as any of the Notes is outstanding, notice must be given under Condition 16 (*Notices*) at least seven days before the removal or appointment of a Calculation Agent.

Notwithstanding the above, if at any time, *inter alia*, (i) a Calculation

Agent becomes incapable of acting, or is adjudged bankrupt or insolvent, or files a voluntary petition in bankruptcy, or if an administrator, liquidator or administrative or other receiver of it or of all or a substantial part of its property is appointed, or (ii) it fails to determine the Rate of Interest, Interest Amount and an Interest Period, the Issuer may with the prior written approval of the Trustee forthwith without notice terminate the appointment of the Calculation Agent.

The Calculation Agent may resign at any time by giving to the Issuer at least 45 days' prior written notice to that effect. If, by the day falling 10 calendar days before the expiry of any notice period specified above, the Issuer has not appointed a successor Calculation Agent then such Calculation Agent shall be entitled, on behalf of the Issuer, to appoint in its place as successor Calculation Agent a reputable financial institution of good standing as approved by the Trustee on behalf of the Issuer (such approval not to be unreasonably withheld or delayed).

Notwithstanding the provisions above, in the case of Floating Rate Notes, so long as any of the Notes is outstanding, the termination of the appointment of the Calculation Agent (whether by the Issuer or by resignation) shall not be effective unless upon the expiry of the relevant notice a successor Calculation Agent has been appointed.

Principal Paying Agent and Transfer Agent:	The Bank of New York Mellon, London Branch
Collateral Agent:	The Bank of New York Mellon of One Wall Street – 4th Floor, New York, NY 10286
Registrar:	The Bank of New York Mellon (Luxembourg) S.A.
Trustee:	BNY Mellon Corporate Trustee Services Limited
Sellers:	Morgan Stanley Senior Funding Inc. (MSSF) Morgan Stanley Mortgage Capital Holdings LLC (MSMCH) Morgan Stanley Principal Funding Inc. Morgan Stanley Asset Funding Inc. Morgan Stanley & Co. International plc. Morgan Stanley Capital Services Inc. Morgan Stanley Capital Group Inc. and any other Seller specified in the applicable Final Terms.
Maximum Amount of Programme:	U.S.\$5,000,000,000 (or its equivalent in other currencies), subject to increase from time to time.
Currencies:	Subject to any applicable legal or regulatory restrictions, Notes may be issued in any currency as agreed between the Issuer and the Dealer.
Distribution:	The Notes of each Series will be issued to the Dealer or to the other subscriber(s) to such Series by way of private placement, as specified in the applicable Final Terms.

Maturities: Subject to any applicable legal or regulatory restrictions, such maturity as may be specified in the applicable Final Terms.

Issue Price: Where applicable, Notes may be issued on a fully-paid or a partly-paid basis and at an issue price which is at par or at a discount or premium to par.

Fixed Rate Notes: Fixed interest will be payable at such rate or rates and on such dates as may be agreed between the Issuer and the Dealer and will be calculated on the basis of such Fixed Day Count Fraction as may be agreed between the Issuer and the Dealer (as specified in the applicable Final Terms).

Floating Rate Notes: Floating rate interest will be payable at such rate and on such dates as may be agreed between the Issuer and the Dealer as specified in, or determined pursuant to, the applicable Final Terms and will be calculated on the basis of such Floating Day Count Fraction as may be agreed between the Issuer and the Dealer (as specified in the applicable Final Terms).

Interest at a floating rate will be determined either:

- (i) on the same basis as the floating rate under a notional interest-rate swap transaction in the relevant Currency of Issue governed by an agreement incorporating the ISDA Definitions; or
- (ii) on the basis of a reference rate appearing on the agreed screen page of a commercial quotation service; or
- (iii) on such other basis as may be agreed between the Issuer and the Dealer,

in each case, as indicated in the applicable Final Terms.

Floating Rate Notes may also have a maximum interest rate, a minimum interest rate or both.

The Spread (if any) relating to such floating rate will be agreed between the Issuer and the Dealer for each Series of Floating Rate Notes.

Types of Notes: The relevant terms applicable to any type of Note which the Issuer and the Dealer may agree to issue under the Programme will be set out in the applicable Final Terms.

Form of Notes: Notes will be issued in registered form.

The Notes will be offered or sold outside the United States to Eligible Purchasers only in compliance with Regulation S and will be represented by a Global Note deposited with a common depositary for Euroclear and Clearstream, Luxembourg. The Notes, or any interest

therein, may not at any time be offered, sold, on sold, traded, pledged, redeemed, transferred or delivered, directly or indirectly to or to the account or benefit of any person other than an Eligible Purchaser.

Notes will be offered or sold to Eligible Purchasers only.

No beneficial owner of an interest in a Global Note will be able to exchange or transfer that interest, except in accordance with the applicable procedures of Euroclear and/or Clearstream, Luxembourg or, where the context so permits, any additional or alternative clearing system specified in the applicable Final Terms. In addition, Global Notes and Definitive Notes will be subject to certain restrictions on transfer set out in a legend thereon.

For so long as any of the Notes is represented by a Global Note held by a common depository on behalf of Euroclear and/or Clearstream, Luxembourg, each person who is for the time being shown in the records of Euroclear or Clearstream, Luxembourg as entitled to a particular nominal amount of Notes shall be deemed to be the holder of such nominal amount of Notes for all purposes other than with respect to the payment of principal, premium (if any), interest or other amounts on such Notes, for which purpose such common depository or its nominee shall be deemed to be the holder of such nominal amount of Notes in accordance with and subject to the terms of the relevant Global Note.

Eligible Purchaser: An investor who is both (i) a non-U.S. Person (as defined in Regulation S) and (ii) a "qualified institutional buyer" (as defined in Rule 144A) and a "qualified purchaser" as defined in Section 2(a)(51) of the Investment Company Act and the rules thereunder.

Specified Denominations: Notes will be issued in such denominations as may be specified in the applicable Final Terms save that the minimum denomination of each Note will be U.S.\$250,000, or its equivalent in another currency.

Early Redemption: Notes will be redeemable prior to maturity only in limited circumstances upon the occurrence of certain events relating to the Issuer as set out in Condition 9 (*Redemption*) or relating to an acceleration of the Notes as specified in Condition 12 (*Events of Default*) or as otherwise specified in the applicable Final Terms.

Optional Early Redemption by the Issuer or the Noteholders: If specified in the applicable Final Terms, Notes may be redeemed at the option of the Issuer or the Noteholders prior to their stated maturity, on such dates and on such terms as are specified in such Final Terms.

Taxation: The Issuer will not be obliged to gross up any payments in respect of the Notes (including for tax suffered in respect of a payment under the Collateral Assets or any Transfer Agreements).

The Noteholders will bear such tax or withholding through a reduction of the amounts available for payment under the Notes, unless otherwise specified in the applicable Final Terms.

Listing:

The Base Prospectus has been approved by the Central Bank as competent authority under the Prospectus Directive. Application has been made to the Irish Stock Exchange for the Notes to be admitted to the Official List and trading on its regulated market. The Notes may also be listed on such other or further stock exchange or stock exchanges (other than in respect of an admission to trading on any market in the EEA which has been designated as a regulated market for the purposes of the Prospectus Directive) as may be agreed between the Issuer and the Dealer in relation to each issue.

Notes which are neither listed nor admitted to trading on any market may also be issued. The applicable Final Terms will state whether or not the relevant Notes are to be listed and/or admitted to trading and, if so, on which stock exchange(s) and/or markets.

Status of Notes:

Notes of each Series will be secured, direct obligations of the Issuer ranking *pari passu* and without preference among themselves.

Collateral Assets:

A Collateral Asset shall be any obligation which satisfies the Eligibility Criteria and, in each case, shall include any Related Security in respect thereof.

Eligibility Criteria:

Each Collateral Asset must satisfy the following criteria:

- (a) it is:
 - (i) a European corporate loan being a secured or unsecured, senior or subordinated, syndicated or unsyndicated loan granted to a European corporate or similar entity;
 - (ii) a U.S. corporate loan being a secured or unsecured, senior or subordinated, syndicated or unsyndicated loan granted to a U.S. corporate or similar entity;
 - (iii) a U.S. residential and/or commercial mortgage whole loan (including funded home equity lines of credit) secured by liens on or other security interests over the respective Obligor's freehold and/or leasehold or other similar interests in residential mortgaged properties and/or in commercial and multifamily mortgaged properties;
 - (iv) a European residential and/or commercial mortgage whole loan secured by liens on or other security interests over the respective Obligor's freehold and/or leasehold or other similar interests in residential mortgaged properties and/or in commercial and multifamily mortgaged properties;
 - (v) the Proceeds in respect of a Tagged Derivative and the rights of a Seller to the relevant Seller Derivatives

Account;

- (vi) an English law sub-participation of a European corporate loan between Morgan Stanley Bank International Limited and MSSF, the relevant European corporate loan being a secured or unsecured, senior or subordinated, syndicated or unsyndicated loan granted to a European corporate or similar entity; or
 - (vii) cash standing to the credit of the relevant Series Account and/or amounts attributable to the applicable Series standing to the credit of the Clearing Accounts as shown in the applicable Clearing Account Ledger;
- (b) (i) it is capable of being assigned or participated to the Issuer and is capable of being reassigned by the Issuer or (ii) the beneficial interest of such Collateral Asset is capable of being acquired by the Issuer pursuant to a Declaration of Trust and of being relinquished by the Issuer, in each case without a breach of any applicable law or regulation, selling restriction or contractual provision and the Issuer does not require any authorisations, consents approvals or filings (other than such as have been obtained or effected) as a result of or in connection with any such assignment, reassignment, participation, acquisition or relinquishment under any applicable law;
- (c) upon acquisition, or the acquisition of the beneficial interest therein, by the Issuer, the Collateral Asset is capable of being, and will be, the subject of a first fixed charge or a first ranking assignment by way of security in favour of the Trustee for the benefit of the Secured Parties pursuant to the Trust Instrument (or any deed or document supplemental thereto) or any Additional Charging Document; and
- (d) it must satisfy any other criteria which qualify criteria (a)(i) to (vii) above as specified in the applicable Final Terms in respect of the relevant Series.

Related Security:

In respect of a Collateral Asset, all of the relevant Seller's right, title and benefit in and to any security for such Collateral Asset, including any mortgage or standard security, guarantee, cash reserve, assignment or assignation or other collateral, intercreditor agreement or deed of priority and any policies of insurance held by or in favour of the relevant Seller in respect of such Collateral Asset or any of its Related Security.

Method of Transfer of Collateral Assets:

The Collateral Assets relating to each Series will be acquired by the Issuer in the following manner (unless otherwise specified in the applicable Final Terms):

- (i) in respect of Collateral Assets specified in (a)(i), (iii), (iv) and

- (v) of "Eligibility Criteria" above the beneficial interest of such asset will be acquired by the Issuer pursuant to a Declaration of Trust and will be held on trust for the Issuer by the applicable Seller;
- (ii) in respect of Collateral Assets specified in (a)(ii) of "Eligibility Criteria" above, the Issuer shall acquire the beneficial interest therein by way of a Master Participation Agreement;
- (iii) in respect of Collateral Assets specified in (a)(vi) of "Eligibility Criteria" above, the Issuer shall acquire an interest therein by way of an assignment pursuant to the terms of the Collateral Transfer Agreement; and
- (iv) in respect of Collateral Assets specified in (a)(vii) of "Eligibility Criteria" above, cash shall be deposited into the relevant Series Account pursuant to the terms of the Collateral Transfer Agreement,

in each case subject to the security in favour of the Trustee.

The Issuer may substitute or replace Collateral Assets pursuant to the terms of the applicable Collateral Transfer Agreement and Final Terms. See further "*Collateral Asset Transfer*" below.

Security:

Unless otherwise specified in the applicable Final Terms, the Issuer will grant to the Trustee, on behalf of the Noteholders and the other Secured Parties, the following security to secure its obligations under each Series of Notes and the relevant Transfer Agreement(s) (if any):

- (i) a first ranking assignment by way of security of all of the Issuer's Rights under the Agency Agreement;
- (ii) a first fixed charge and a first ranking assignment by way of security of all of the Issuer's Rights to, under and in respect of, the Collateral Assets;
- (iii) a first ranking assignment by way of security of the Issuer's Rights under the Transfer Agreement(s); and
- (iv) a first fixed charge and a first ranking assignment by way of security of all of the Issuer's Rights to any Series Accounts in respect of such Series.

Pursuant to the Trust Instrument executed in respect of the first Series of Notes the Trustee on behalf of the Secured Parties in respect of all Series of Notes of the Issuer will also have the benefit of a first floating charge over all present and future rights of the Issuer in respect of the Clearing Accounts and all moneys from time to time standing to the credit of the Clearing Accounts and the debts represented thereby and including, without limitation, all interest accrued and other moneys received in respect thereof and all of its

rights, title interest and benefit and all of its entitlement in relation thereto.

The Notes may also be secured by additional security documents and/or on such other assets as may be specified in the applicable Final Terms.

Transfer Agreements:

The Transfer Agreements in respect of a Series will comprise the Collateral Transfer Agreement, any Declaration of Trust and any Master Participation Agreement entered into in connection with such Series and any other agreements specified in the applicable Final Terms.

Priority of Payments:

All amounts received by the Trustee upon realisation of, or enforcement with respect to, the security constituted by or pursuant to the Security Documents in respect of a Series (excluding amounts received upon realisation of, or enforcement with respect to, the floating charge granted over the rights of the Issuer in respect of the Clearing Accounts) shall be applied in accordance with the order set out below, unless otherwise specified in the applicable Final Terms:

Firstly, to the payment of all amounts due but unpaid to the Trustee;

Secondly, to the payment of all amounts due but unpaid to the Agents on a *pari passu* and *pro rata* basis;

Thirdly, in meeting all claims of the Noteholders in respect of due but unpaid interest on the Notes on a *pari passu* and *pro rata* basis;

Fourthly, in meeting all claims of the Noteholders in respect of due but unpaid principal on the Notes on a *pari passu* and *pro rata* basis;

Fifthly, to the payment of all amounts due but unpaid to the Sellers under the Transfer Agreements and to the payment of all amounts due but unpaid to the Guarantor as reimbursement for amounts paid by the Guarantor under the relevant Guarantee, on a *pari passu* and *pro rata* basis; and

Sixthly, any remaining amounts will be paid to the Issuer.

Amounts received upon realisation of, or enforcement with respect to, the security granted over the rights of the Issuer in respect of the Clearing Accounts shall be distributed to the Secured Parties in respect of each Accelerated Series *pari passu* and *pro rata* as to the Clearing Account Amount in respect of each such Accelerated Series. The amount available to be so applied in respect of each Accelerated Series being the **Clearing Account Series Distributable Amount**. The Clearing Account Series Distributable Amount in respect of each Accelerated Series shall be applied in accordance with the first five items of the Priority of Payments in respect of such Series.

All amounts remaining after the Clearing Account Series Distributable Amounts in respect of all Accelerated Series have been applied as

described above shall be transferred back to the relevant Clearing Accounts and shall be subject to the security granted by the Issuer pursuant to Clause 8(A)(y) of the Trust Instrument in respect of the first Series of Notes.

See further Condition 7 (*Application of Proceeds*). For the avoidance of doubt, Noteholders in respect of a Series will not have recourse to the Mortgaged Property in respect of other Series other than the Security Interest granted over the Clearing Accounts.

Guarantee:

Each Series of Notes shall have the benefit of an irrevocable and unconditional parent guarantee (each such guarantee, a **Guarantee**) from Morgan Stanley (the **Guarantor**). Under the relevant Guarantee, the Guarantor irrevocably and unconditionally agrees to the due and punctual payment by the Issuer of all amounts due and payable under the Notes of such Series (the **Guaranteed Amounts**). Upon (i) the failure of the Issuer punctually to pay any such amounts, and (ii) written demand by the Trustee on behalf of the Noteholders to the Guarantor at its address set forth in the relevant Guarantee, the Guarantor will agree to pay or cause to be paid the Guaranteed Amounts. See further the sections of this Base Prospectus entitled "*Form of the Guarantee*", "*Description of the Guarantor*" and "*Risks relating to the Guarantor*".

Status of the Guarantee:

The obligations of the Guarantor under each Guarantee are senior, direct, unconditional and unsecured obligations of the Guarantor and rank without preference among themselves and *pari passu* with all other outstanding senior, unsecured and unsubordinated obligations of the Guarantor, present and future, but in the event of insolvency, only to the extent permitted by laws relating to creditors' rights. See further the sections of this Base Prospectus entitled "*Form of the Guarantee*" and "*Description of the Guarantor*".

Series Account:

The Issuer will open a segregated bank account for each Series (the **Series Account**), as necessary, where amounts relating to such Series will be deposited in accordance with the Conditions of the Notes and the terms of the Transfer Agreements.

Events of Default:

Each of the following events shall constitute an Event of Default under the Notes:

Payment default

- (i) if default is made for a period of 10 days or more in the payment of any sum as the same is due in respect of the Notes or any of them;

Failure to perform other obligations

- (ii) if the Issuer fails to perform or observe any of its other obligations under the Notes or the Transaction Documents and (except where in the opinion of the Trustee, such failure is not capable of remedy when no continuation of such failure

or notice served by the Trustee shall be required) such failure continues for a period of 10 days (or such longer period as the Trustee may permit) after notice requiring the same to be remedied shall have been given to the Issuer by the Trustee and the Trustee shall have certified such failure is, in its opinion, materially prejudicial to the interests of the Noteholders;

Insolvency/winding-up of Issuer or Guarantor

- (iii) if any order is made by any competent court or any resolution passed for the winding-up or dissolution of the Issuer or the Guarantor other than for the purposes of amalgamation, merger, consolidation, reorganisation or other similar arrangements;

Default Notice served under Collateral Transfer Agreement

- (iv) a Default Notice is delivered to the Defaulting Party pursuant to paragraph 11 of the Collateral Transfer Agreement;

Other events specified in Final Terms

- (v) any other event specified as an Event of Default in the applicable Final Terms.

Governing Law:

The Notes and any non-contractual obligations arising in relation thereto will be governed by, and construed in accordance with, English law and each Guarantee will be governed by, and construed in accordance with, the laws of the State of New York.

Selling Restrictions:

The Notes may not be offered, sold or delivered *at any time*, directly or indirectly, within the United States or to or for the account of U.S. Persons (as defined in Regulation S under the Securities Act). Notes will be offered or sold to Eligible Purchasers only.

There are selling restrictions in relation to the United States, the European Economic Area (including the United Kingdom) and such other restrictions as may be required (and specified in the applicable Final Terms) in connection with the offering and sale of a particular Series of Notes. See "***Subscription and Sale and Transfer Restrictions***" on pages 111 to 118 and "***No Ownership by U.S. Persons***" on page 119 below. The Issuer may compel any beneficial owner of an interest in the Notes to sell its interest in such Notes, or may sell such interest on behalf of such holder, if such holder is not an Eligible Purchaser.

Rating:

A Series of Notes may be rated by S&P and Fitch as specified in the applicable Final Terms. The rating of a Series of Notes will depend solely upon the rating of the Guarantor and will not have any regard to the Collateral Assets. Whether or not each credit rating applied for in relation to a relevant Series of Notes will be issued by a credit rating agency established in the European Union and registered under

Regulation (EC) No. 1060/2009 (as amended) will be disclosed in the applicable Final Terms.

A security rating is not a recommendation to buy, sell or hold securities and may be subject to suspension, reduction or withdrawal at any time by the assigning rating agency.

B. NOTEHOLDER REPORTS

The Noteholder Reports will be prepared on each Business Day or as otherwise specified in the applicable Final Terms. The Collateral Agent will make the Noteholder Reports available to the Noteholders on an internal secure website: AccessEdge.

C. COLLATERAL ASSETS TRANSFER

Overview:

Each Series of Notes will have the benefit of a Collateral Transfer Agreement under which the Seller(s) and the Issuer will agree the terms governing the acquisition of the Collateral Assets relating to the Series by the Issuer. Under the Collateral Transfer Agreement relating to the Series (a) on the Issue Date in respect of such Series, the applicable Seller will transfer and the Issuer will purchase the Collateral Assets and (b) on the Repurchase Date in respect of such Series, the Issuer will re-transfer and the applicable Seller will purchase the Collateral Assets or Equivalent Assets.

As described in "Method of Transfer of Collateral Assets" above, depending on the type of Collateral Assets, the "transfer" pursuant to the Collateral Transfer Agreement may be effected by way of assignment, declaration of trust or the granting of a participation.

In respect of Trust Assets acquired by a declaration of trust, references to the "transfer" of Collateral Assets (a) by the relevant Seller to the Issuer shall mean the acquisition of the beneficial interest in such Trust Assets and Related Security by the Issuer by the relevant Seller declaring a trust and (b) by the Issuer to the relevant Seller shall mean the relinquishment by the Issuer of the beneficial interest in such Trust Assets and Related Security or the transfer of Equivalent Assets by the Issuer to the relevant Seller.

In respect of Collateral Assets acquired by way of Participation, references to the "transfer" of Collateral Assets and Equivalent Assets (a) by the relevant Seller to the Issuer shall mean the granting of a participation by the Seller to the Issuer and (b) by the Issuer to the relevant Seller shall mean the termination of such Participation by the Issuer and the Seller or the transfer of Equivalent Assets.

In respect of Collateral Assets acquired by way of assignment, references to the "transfer" of Collateral Assets and Equivalent Assets (a) by the relevant Seller to the Issuer shall mean the granting of an Assignment by the Seller to the Issuer and (b) by the Issuer to the relevant Seller shall mean the reassignment of such Collateral Assets and Equivalent Assets by the Issuer to the relevant Seller. In each case the terms "*Purchase Date*", "*Repurchase Date*", "*Purchase Price*",

"sell", "purchase" and "substitution" shall be interpreted accordingly.

The Collateral Transfer Agreement in respect of each Series will have the following terms, as amended by the applicable Final Terms:

Collateral Assets Report:	On the Issue Date in respect of each Series, the Seller(s) will deliver or procure the delivery of a report in the form set out in the Annex to the Collateral Transfer Agreement (a Collateral Assets Report) which will include the details of the Collateral Assets for such Series as at the Issue Date. Substitutions and margin maintenance will be effected by the delivery of a new Collateral Assets Report by the Sellers as described below in the section entitled " <i>Margin Maintenance</i> ".
Interim payment obligations of the parties:	Under the applicable Collateral Transfer Agreement, prior to service of a Default Notice (a) amounts of Income received by the Issuer either directly from the relevant Obligor or from the relevant Seller pursuant to the applicable Transfer Agreements shall be paid by the Issuer to the applicable Seller (provided that payment of such amounts by the Issuer may be set off against amounts due from the Sellers to the Issuer under the Transfer Agreements) and (b) the Seller shall (collectively) pay to the Issuer amounts equal to each Interest Amount in respect of the applicable Series on each Interest Payment Date in respect of the relevant Series.
Income:	With respect to any Collateral Asset at any time, all amounts of principal, interest, dividends or other distributions thereon, including amounts in respect of interest on Collateral Assets that are cash deposited in the Series Account.
Purchaser:	The Issuer.
Seller:	In respect of each Collateral Asset, the Seller as specified in the applicable Collateral Assets Report.
Base Currency:	The currency of denomination of the relevant Series.
Purchase Date:	The Issue Date in respect of the relevant Series.
Repurchase Date:	The earlier of (i) the Maturity Date and (ii) the Early Redemption Date, Optional Put Redemption Date or Optional Call Redemption Date, provided that the Notes are redeemed in full on such date.
Purchase Price:	The product of the Issue Price and the Outstanding Principal Amount of the Notes on the Issue Date, in each case, in respect of the relevant Series.
Repurchase Price:	In respect of a determination of "Transaction Exposure" on any Business Day, the Outstanding Principal Amount on such Business Day and in all other circumstances, the Final Redemption Amount in respect of the relevant Series.
Equivalent Assets:	Assets equivalent to the relevant Collateral Assets. If and to the extent

that such Collateral Assets have been redeemed, the expression shall mean a sum of money equivalent to the proceeds of the redemption. For the avoidance of doubt, an asset must have the same obligor and be of the same credit quality as the relevant Collateral Asset to be considered "equivalent" to such Collateral Asset.

Margin maintenance:

On each Business Day, the Sellers will determine and notify the Issuer and the Collateral Agent of the Market Value of the Collateral Assets. If on any Business Day either party has a Net Exposure under the Collateral Transfer Agreement in respect of the other party the other party will make a Margin Transfer to it of an aggregate amount or value at least equal to that Net Exposure. Where the Issuer or the Sellers become obliged to make a Margin Transfer pursuant to the Collateral Transfer Agreement, the Sellers will deliver or procure delivery of a Collateral Assets Report to the Issuer and the Collateral Agent by 8 p.m. (New York time) on the Business Day on which such obligation arises, which will result in new Collateral Assets being added in respect of such Series (if the Issuer has a Net Exposure to the Sellers) or Collateral Assets being transferred to the Sellers by the Issuer (if the Sellers have a Net Exposure to the Issuer), in each case, in an amount which would result in such Margin Transfer being effected.

Upon the Sellers notifying the Issuer that the Issuer must make a Margin Transfer to the Sellers, the Issuer may, but shall not be obliged to, transfer Equivalent Assets to the Sellers in place of transferring Collateral Assets to the Sellers, provided that within the required deadline such transfer of Equivalent Assets results in the Margin Transfer. For the avoidance of doubt, the Issuer shall not be obliged to transfer the Collateral Assets which have been replaced by Equivalent Assets pursuant to this sub-paragraph on the Repurchase Date.

Margin Ratio:

The percentage specified in the applicable Final Terms.

Net Exposure:

A party has a Net Exposure in respect of the other party if the first party's Transaction Exposure is positive and equal to or greater than the Margin Transfer Threshold.

Transaction Exposure:

On any Business Day during the period from the Purchase Date to the Repurchase Date, the difference between (i) the Repurchase Price at such time multiplied by the applicable Margin Ratio and (ii) the aggregate Market Value of the Collateral Assets on such Business Day. If (i) is greater than (ii), the Issuer has a Transaction Exposure equal to that excess. If (ii) is greater than (i), the relevant Seller has a Transaction Exposure equal to that excess.

Margin Transfer Threshold:

The amount specified in the applicable Final Terms, such amount to be no greater than U.S.\$100,000 or its equivalent in another currency.

Market Value:

The value in respect of a Collateral Asset or Equivalent Asset as determined by the applicable Sellers acting in good faith and a commercially reasonable manner pursuant to and consistent with the methodology utilised by such Sellers to mark such Collateral Asset

and Equivalent Asset for their own books and records or, if specified in the applicable Final Terms, by reference to third party quotations.

In respect of those Collateral Assets not denominated in the currency of the applicable Series, such Market Value will be converted into the currency of the applicable Series at the spot rate of exchange at 3 p.m. (New York time) for such currencies on each Business Day as determined by the Sellers for the purposes of calculating the Transaction Exposure on such Business Day.

Delivery period for margin calls: Each Business Day, unless otherwise specified in the applicable Final Terms.

Administration of valuations: The Sellers will, on each Business Day, send their determinations of Market Value in the Collateral Asset Report to the Collateral Agent who will verify the composition of the Collateral Assets against the Eligibility Criteria and notify the relevant Seller and the Issuer of any incorrect allocation. The Collateral Agent will prepare and publish the Noteholder Reports.

The Collateral Agent will be appointed by the Issuer pursuant to the Master Collateral Verification Agreement. See further the section entitled "*Description of the Master Collateral Verification Agreement*".

Substitutions: On any Business Day, a Seller may substitute Collateral Assets held by the Issuer pursuant to the terms of the applicable Collateral Transfer Agreement and the Eligibility Criteria, provided that an Event of Default under the Collateral Transfer Agreement is not subsisting and provided further that the aggregate Market Value of the Collateral Assets transferred by the Sellers to the Issuer is no less than the aggregate Market Value of the Collateral Assets or Equivalent Assets transferred by the Issuer to the Sellers on such Business Day. On any Business Day a substitution is to be effected, the Sellers shall deliver a new Collateral Assets Report to the Issuer and the Collateral Agent setting out the Collateral Assets relating to such Series and the substitution will be effective as of the date of delivery of the Collateral Asset Report.

D. DECLARATION OF TRUST

Overview: Each Series of Notes for which the beneficial interest in some or all of the Collateral Assets, transferred under the Collateral Transfer Agreement, will be acquired by the Issuer by way of declaration of trust will have the benefit of a separate Declaration of Trust. On the Issue Date and throughout the term of the Series, the Seller will, by delivering a Collateral Assets Report, declare a trust over those Collateral Assets specified in the Collateral Assets Report as being subject to the Declaration of Trust. From the date of delivery of the Collateral Assets Report, the Sellers will hold the beneficial interest in such Collateral Assets on trust for the Issuer pursuant to the Declaration of Trust until the earlier of (a) the delivery of a Collateral Assets Report by the Seller which has the effect of removing such

Collateral Asset from the portfolio of Collateral Assets relating to such Series and (b) the Maturity Date, at which time the Issuer shall relinquish the beneficial interest in such Collateral Asset.

Trust Asset:

Means those Collateral Assets the beneficial interest of which is to be acquired by a Declaration of Trust as described in "*Method of Transfer of Collateral Assets*" above.

E. MASTER PARTICIPATION AGREEMENT

Overview:

Each Series of Notes for which the interest in some or all of the Collateral Assets, transferred under the Collateral Transfer Agreement, will be acquired by the Issuer by way of a New York law participation (a **Participation**) will have the benefit of a separate Master Participation Agreement. The Seller will, by delivering a Collateral Assets Report, grant a Participation in the relevant Collateral Asset in favour of the Issuer on the Issue Date relating to the applicable Series. The Participation may be terminated upon the Collateral Asset being removed from the portfolio of Collateral Assets on the earlier to occur of (a) the delivery of a Collateral Assets Report by the applicable Seller to the Issuer and Collateral Agent which has the effect of removing such Collateral Asset from the portfolio of Collateral Assets relating to such Series and (b) the Repurchase Date (as defined in the relevant Collateral Transfer Agreement).

F. TAGGED DERIVATIVES

Overview:

Where the Trust Assets are the Proceeds in respect of Tagged Derivatives received by the Seller, the Seller will declare a trust over such Proceeds, the relevant segregated Seller Derivatives Account and all cash credited to it from time to time and the Seller will covenant with the Issuer to pay all Proceeds received under such Tagged Derivatives into such segregated Seller Derivatives Account upon the occurrence of a Trigger Event.

For the avoidance of doubt, the trust will be declared over only the Proceeds in respect of the Tagged Derivatives once received and for so long as such Proceeds are required to be deposited in the relevant Seller Derivatives Account and not over the rights of the Sellers under the Tagged Derivatives. Please see further sub-paragraphs 4.7(d) "*Tagged Derivatives*" and 4.8(e) "*Proceeds of Tagged Derivatives*" under the heading "*Risk Factors*" below.

Tagged Derivative:

Each ISDA Master Agreement and all derivative transactions thereunder between the relevant Seller and a third party counterparty that is tagged in the internal records of the applicable Seller and identified in a Collateral Assets Report by its Morgan Stanley Internal Identifier Code, the Proceeds in respect of which form part of the Collateral Assets. ISDA Master Agreements and all derivative transactions thereunder between a Seller and a third party counterparty will be added and removed as Tagged Derivatives in respect of a Series by the delivery of a Collateral Assets Report as described in "*Margin Maintenance*" and "*Substitutions*" above and will

automatically cease to be Tagged Derivatives on the Maturity Date.

Security in respect of U.S. incorporated Seller and Tagged Derivatives:

In respect of a U.S. incorporated Seller only, such Seller will, in addition to the declaration of trust over the Proceeds in respect of the Tagged Derivatives, also grant a security interest to the Issuer over all of its Rights in respect of such Tagged Derivatives (or the relevant portion thereof) pursuant to the applicable Collateral Transfer Agreement. This grant of security will secure the Seller's repurchase payment obligation under the applicable Collateral Transfer Agreement.

Seller Derivatives Account:

A segregated bank account with the Account Bank in the name of the Seller for each Series. The Proceeds in respect of Tagged Derivatives will be held on trust by the Seller for the benefit of the Issuer and paid into the relevant Seller Derivatives Account upon the occurrence of a Trigger Event. Any cash standing to the credit of the relevant Seller Derivatives Account may not be withdrawn other than in order to transfer such amounts to the Issuer or the Trustee to be deposited into the relevant Series Account and applied in accordance with the Priority of Payments. Please see further sub-paragraph 4.8(e) "*Proceeds of Tagged Derivatives*" under the heading "*Risk Factors*" below.

Proceeds:

In respect of a Tagged Derivative, the product of (a) the Tagged Derivatives Proportion and (b) cash amounts received by the relevant Seller in respect of termination of such Tagged Derivative, provided such amounts are received after the occurrence of a Trigger Event and while such Trigger Event is subsisting.

Tagged Derivatives Proportion:

In respect of a Tagged Derivative, the percentage specified in the most recent Collateral Assets Report in respect of such Tagged Derivative and, if no percentage is specified in the applicable Collateral Assets Report, 100 per cent.

Trigger Event:

The occurrence of:

- (i) a Note Event of Default in respect of the Series; or
- (ii) an Act of Insolvency (as defined in the Collateral Transfer Agreement) in respect of a Seller.

Covenants of Seller re Collateral Assets that are derivative contracts:

Each Seller will undertake in the applicable Declaration of Trust to take such action as is required to preserve and/or exercise and/or enforce all of its rights and remedies using commercially reasonable efforts in respect of each Tagged Derivative.

RISK FACTORS

An investment in the Notes involves certain risks, including risks relating to the Collateral Assets securing such Notes and risks relating to the structure and rights of such Notes and the related arrangements. Prospective investors should carefully consider the following factors, in addition to the matters set forth elsewhere in this Base Prospectus, prior to investing in any Notes. The considerations set out below in respect of the Notes are not, and are not intended to be, a comprehensive list of all considerations relevant to a decision to purchase or hold the Notes. Additional risks and uncertainties not presently known to the Issuer or that it currently believes to be immaterial could also have a material impact on its business operations and on the Notes.

1. RISKS RELATING TO THE ISSUER

Morgan Stanley is the ultimate parent company of the Morgan Stanley group of companies (the **Morgan Stanley Group**). The Issuer is part of the Morgan Stanley Group.

All material assets of the Issuer are obligations of one or more companies within the Morgan Stanley Group and securities issued by the Issuer are guaranteed by Morgan Stanley. The Issuer does not have income from operations or any other source of income, except for the obligations from other companies in the Morgan Stanley Group, to fulfil its payment obligations under the Notes.

There are substantial inter-relationships between Morgan Stanley and other companies within the Morgan Stanley Group, including the provision of funding, capital services and logistical support to one or more group companies to another group company (or companies), as well as common or shared business or operational platforms or systems, including employees.

The principal risks with respect to Morgan Stanley described below will also represent the principal risks with respect to the Issuer, either as an individual entity or as part of the Morgan Stanley Group of companies.

2. RISKS RELATING TO THE GUARANTOR

2.1 Liquidity and Funding Risk

Liquidity and funding risk refers to the risk that Morgan Stanley will be unable to finance its operations due to a loss of access to the capital markets or difficulty in liquidating its assets. Liquidity and funding risk also encompasses the ability of Morgan Stanley to meet its financial obligations without experiencing significant business disruption or reputational damage that may threaten its viability as a going concern.

2.2 Liquidity is essential to Morgan Stanley's businesses and Morgan Stanley relies on external sources to finance a significant portion of its operations

Liquidity is essential to Morgan Stanley's businesses. Morgan Stanley's liquidity could be negatively affected by an inability to raise funding in the long-term or short-term debt capital markets or Morgan Stanley's inability to access the secured lending markets. Factors that Morgan Stanley cannot control, such as disruption of the financial markets or negative views about the financial services industry generally, including concerns regarding the sovereign debt crisis in Europe, could impair its ability to raise funding. In addition, Morgan Stanley's ability to raise funding could be impaired if lenders develop a negative perception of its long-

term or short-term financial prospects due to factors such as if Morgan Stanley were to incur large trading losses, is downgraded by the rating agencies, suffer a decline in the level of its business activity, or if regulatory authorities take significant action against it, or it discovers significant employee misconduct or illegal activity. If Morgan Stanley is unable to raise funding using the methods described above, it would likely need to finance or liquidate unencumbered assets, such as its investment and trading portfolios, to meet maturing liabilities. Morgan Stanley may be unable to sell some of its assets, or it may have to sell assets at a discount from market value, either of which could adversely affect its results of operations, cash flows and financial condition.

Global markets and economic conditions have been negatively impacted by the ability of certain European Union (EU) member states to service their sovereign debt obligations. The continued uncertainty over the outcome of the EU governments' financial support programs and the possibility that other EU member states may experience similar financial troubles could further disrupt global markets. In particular, it has and could in the future disrupt equity markets and result in volatile bond yields on the sovereign debt of EU members. These factors, or market perceptions concerning such matters, could have an adverse effect on Morgan Stanley's business, financial condition and liquidity. In particular, in connection with certain of Morgan Stanley's Institutional Securities business segment activities, Morgan Stanley has exposure to European peripheral countries, which are defined as exposures in Greece, Ireland, Italy, Portugal and Spain. At 3 January 2012, exposure before hedges to European peripheral countries was approximately U.S.\$5,044 million and net exposure after hedges was approximately U.S.\$3,056 million. Exposure includes obligations from sovereign governments, corporations, and financial institutions. In addition at 31 December 2011 Morgan Stanley had European peripheral country exposure for overnight deposits with banks of approximately U.S.\$448 million.

2.3 Morgan Stanley's borrowing costs and access to the debt capital markets depend significantly on its credit ratings

The cost and availability of unsecured financing generally are dependent on Morgan Stanley's short-term and long-term credit ratings. Factors that are important to the determination of Morgan Stanley's credit ratings include the level and quality of its earnings, capital adequacy, liquidity, risk appetite and management, asset quality, business mix and actual and perceived levels of government support.

Morgan Stanley's debt ratings also can have a significant impact on certain trading revenues, particularly in those businesses where longer term counterparty performance is critical, such as OTC derivative transactions, including credit derivatives and interest rate swaps. In connection with certain OTC trading agreements and certain other agreements associated with the Institutional Securities business segment, Morgan Stanley may be required to provide additional collateral to certain counterparties in the event of a credit ratings downgrade. Morgan Stanley's long-term credit ratings by Moody's and S&P are currently at different levels (commonly referred to as "split ratings"). At 31 December 2011, the amounts of additional collateral or termination payments that could be called by counterparties under the terms of such agreements in the event of a downgrade of Morgan Stanley's long-term credit rating under various scenarios were as follows: U.S.\$919,000,000 (A3 Moody's/A- S&P); U.S.\$3,989,000,000 (Baa1 Moody's/ BBB+ S&P); and U.S.\$4,743,000,000 (Baa2 Moody's/BBB S&P). In addition, Morgan Stanley is required to pledge additional collateral to certain exchanges and clearing organisations in the event of a credit rating downgrade. At 31 December 2011 the increased collateral requirement at certain exchanges and clearing

organisations under various scenarios was \$118 million (A3 Moody's/A- S&P); \$1,183 million (Baa1 Moody's/ BBB+ S&P); and \$1,775 million (Baa2 Moody's/BBB S&P).

The rating agencies are continuing to monitor certain issuer specific factors that are important to the determination of our credit ratings including governance, the level and quality of earnings, capital adequacy, funding and liquidity, risk appetite and management, asset quality, strategic direction, and business mix. Additionally, the agencies will look at other industry-wide factors such as regulatory or legislative changes, macro-economic environment, and perceived levels of government support, and it is possible that they could downgrade Morgan Stanley's ratings and those of similar institutions.

2.4 Morgan Stanley is a holding company and depends on payments from its subsidiaries

Morgan Stanley depends on dividends, distributions and other payments from its subsidiaries to fund dividend payments and to fund all payments on its obligations, including debt obligations. Regulatory and other legal restrictions may limit its ability to transfer funds freely, either to or from its subsidiaries. In particular, many of its subsidiaries, including its broker-dealer subsidiaries, are subject to laws, regulations and self-regulatory organisation rules that authorise regulatory bodies to block or reduce the flow of funds to the parent holding company, or that prohibit such transfers altogether in certain circumstances. These laws, regulations and rules may hinder Morgan Stanley's ability to access funds that it may need to make payments on its obligations. Furthermore, as a bank holding company, Morgan Stanley may become subject to a prohibition or to limitations on its ability to pay dividends or repurchase its stock. The Office of the Comptroller of the Currency (**OCC**), the Board of Governors of the Federal Reserve System (**Fed**) and the Federal Deposit Insurance Corporation (**FDIC**) have the authority, and under certain circumstances the duty, to prohibit or to limit the payment of dividends by the banking organisations they supervise, including Morgan Stanley and its bank holding company subsidiaries.

2.5 Morgan Stanley's liquidity and financial condition have in the past been, and in the future could be, adversely affected by U.S. and international markets and economic conditions

Morgan Stanley's ability to raise funding in the long-term or short-term debt capital markets or the equity markets, or to access secured lending markets, has in the past been, and could in the future be, adversely affected by conditions in the U.S. and international markets and economy. Global market and economic conditions have been particularly disrupted and volatile in recent years and continue to be, including as a result of the sovereign debt crisis in the E.U. In particular, Morgan Stanley's cost and availability of funding have been, and may in the future be, adversely affected by illiquid credit markets and wider credit spreads. Continued turbulence in the U.S., the E.U. and other international markets and economies could adversely affect Morgan Stanley's liquidity and financial condition and the willingness of certain counterparties and customers to do business with Morgan Stanley.

2.6 Market Risk

Market risk refers to Morgan Stanley's exposure to adverse changes in the values of our portfolios and financial instruments due to changes in market prices or rates.

2.7 Morgan Stanley's results of operations may be materially affected by market fluctuations and by global and economic conditions and other factors

Morgan Stanley's results of operations may be materially affected by market fluctuations due to global and economic conditions and other factors. The results of operations in the past have been, and in the future may continue to be, materially affected by many factors, including the effect of economic and political conditions and geopolitical events; the effect of market conditions, particularly in the global equity, fixed income, credit and commodities markets, including corporate and mortgage (commercial and residential) lending and commercial real estate markets; the impact of current, pending and future legislation (including the Dodd-Frank Act), regulation (including capital leverage and liquidity requirements), and legal actions in the U.S. and worldwide; the level and volatility of equity, fixed income and commodity prices, interest rates, currency values and other market indices; the availability and cost of both credit and capital as well as the credit ratings assigned to Morgan Stanley's unsecured short-term and long-term debt; investor sentiment and confidence in the financial markets; the performance of Morgan Stanley's acquisitions, joint ventures, strategic alliances or other strategic arrangements (including Morgan Stanley Smith Barney Holdings LLC (MSSB) and with Mitsubishi UFJ Financial Group, Inc. (MUFG)); Morgan Stanley's reputation; inflation, natural disasters, and acts of war or terrorism; the actions and initiatives of current and potential competitors, as well as governments, regulators and self-regulatory organisations; and technological changes or a combination of these or other factors. In addition, legislative, legal and regulatory developments related to Morgan Stanley's businesses are likely to increase costs, thereby affecting results of operations. These factors also may have an impact on its ability to achieve its strategic objectives.

The results of Morgan Stanley's Institutional Securities business segment, particularly results relating to its involvement in primary and secondary markets for all types of financial products, are subject to substantial fluctuations due to a variety of factors, such as those enumerated above that Morgan Stanley cannot control or predict with great certainty. These fluctuations impact results by causing variations in new business flows and in the fair value of securities and other financial products. Fluctuations also occur due to the level of global market activity, which, among other things, affects the size, number and timing of investment banking client assignments and transactions and the realisation of returns from Morgan Stanley's principal investments. During periods of unfavourable market or economic conditions, the level of individual investor participation in the global markets, as well as the level of client assets, may also decrease, which would negatively impact the results of its Global Wealth Management Group business segment. In addition, fluctuations in global market activity could impact the flow of investment capital into or from assets under management or supervision and the way customers allocate capital among money market, equity, fixed income or other investment alternatives, which could negatively impact its Asset Management business segment.

2.8 Morgan Stanley may experience declines in the value of its financial instruments and other losses related to volatile and illiquid market conditions

Market volatility, illiquid market conditions and disruptions in the credit markets have made it extremely difficult to value certain of Morgan Stanley's securities particularly during periods of market displacement. Subsequent valuations, in light of factors then prevailing, may result in significant changes in the values of these securities in future periods. In addition, at the time of any sales and settlements of these securities, the price Morgan Stanley ultimately realises will depend on the demand and liquidity in the market at that time and may be materially lower than their current fair value. Any of these factors could cause a decline in the value of Morgan Stanley's securities portfolio, which may have an adverse effect on Morgan Stanley's results of operations in future periods.

In addition, financial markets are susceptible to severe events evidenced by rapid depreciation in asset values accompanied by a reduction in asset liquidity. Under these extreme conditions, hedging and other risk management strategies may not be as effective at mitigating trading losses as they would be under more normal market conditions. Moreover, under these conditions market participants are particularly exposed to trading strategies employed by many market participants simultaneously and on a large scale, such as crowded trades. Morgan Stanley's risk management and monitoring processes seek to quantify and mitigate risk to more extreme market moves. However, severe market events have historically been difficult to predict, as seen in recent years, and Morgan Stanley could realise significant losses if extreme market events were to occur.

2.9 Holding large and concentrated positions may expose Morgan Stanley to losses

Concentration of risk may reduce revenues or result in losses in Morgan Stanley's market-making, investing, block trading, underwriting and lending businesses in the event of unfavourable market movements. Morgan Stanley commits substantial amounts of capital to these businesses, which often results in it taking large positions in the securities of, or making large loans to, a particular issuer or issuers in a particular industry, country or region..

2.10 Morgan Stanley has incurred, and may continue to incur, significant losses in the real estate sector

Morgan Stanley finances and acquires principal positions in a number of real estate and real estate-related products for its own account, for investment vehicles managed by affiliates in which it also may have a significant investment, for separate accounts managed by affiliates and for major participants in the commercial and residential real estate markets. At 31 December 2011, the consolidated statements of financial condition included amounts representing real estate investment assets of consolidated subsidiaries of approximately U.S.\$2.0 billion including non-controlling interests of approximately U.S.\$1.6 billion. In addition, Morgan Stanley had contractual capital commitments, guarantees, lending facilities and counterparty arrangements with respect to real estate investments of U.S.\$0.8 billion at 31 December 2011.

Morgan Stanley also originates loans secured by commercial and residential properties. Further, Morgan Stanley securitises and trades in a wide range of commercial and residential real estate and real estate-related whole loans, mortgages and other real estate and commercial assets and products, including residential and commercial mortgage-backed securities. These businesses have been, and may continue to be, adversely affected by the downturn in the real estate sector. In connection with these activities, Morgan Stanley has provided, or otherwise agreed to be responsible for, certain representations and warranties. Under certain circumstances, Morgan Stanley may be required to repurchase such assets or make other payments related to such assets if such representations and warranties were breached. Between 2004 and 31 December 2011, Morgan Stanley sponsored approximately U.S.\$148 billion of residential mortgage-backed securities (**RMBS**) primarily containing U.S. residential loans. Of that amount, Morgan Stanley made representations and warranties concerning approximately U.S.\$47 billion of loans and agreed to be responsible for the representations and warranties made by third-party sellers, many of which are now insolvent, on approximately U.S.\$21 billion of loans. At 31 December 2011, the current unpaid principal balance (**UPB**) for all the residential assets subject to such representations and warranties was approximately U.S.\$23.5 billion and the cumulative losses associated with U.S. RMBS were approximately U.S.\$10.5 billion. Morgan Stanley did not make, or otherwise agree to be responsible, for the representations and warranties made by third party

sellers on approximately U.S.\$80 billion of residential loans that Morgan Stanley securitised during that time period. Morgan Stanley has not sponsored any U.S. RMBS transactions since 2007.

Morgan Stanley has also made representations and warranties in connection with its role as an originator of certain commercial mortgage loans that were securitised in commercial mortgage-backed securities (**CMBS**). Between 2004 and 2010, Morgan Stanley originated approximately U.S.\$44 billion and U.S.\$27 billion of U.S. and non-U.S. commercial mortgage loans, respectively, that were placed into CMBS sponsored by Morgan Stanley. At 31 December 2011, the current UPB for all U.S. commercial mortgage loans subject to such representations and warranties was U.S.\$35.2 billion. At 31 December 2011, the current UPB when known for all non-U.S. commercial mortgage loans, subject to such representations and warranties was approximately U.S.\$13.9 billion and the UPB at the time of sale when the current UPB is not known was \$0.4 billion.

Over the last several years, the level of litigation and investigatory activity focused on residential mortgage and credit crisis-related matters has increased materially in the financial services industry. As a result, Morgan Stanley have been and expect that it may continue to become the subject of increased claims for damages and other relief regarding residential mortgages and related securities in the future. Morgan Stanley continues to monitor its real estate-related activities in order to manage its exposures and potential liability from these markets and businesses.

2.11 **Credit Risk**

Credit risk refers to the risk of loss arising from borrower or counterparty default when a borrower, counterparty or obligor does not meet its obligations.

2.12 **Morgan Stanley is exposed to the risk that third parties that are indebted to it will not perform their obligations**

Morgan Stanley incurs significant credit risk exposure through the Institutional Securities business segment. This risk may arise from a variety of business activities, including but not limited to entering into swap or other derivative contracts under which counterparties have obligations to make payments to Morgan Stanley; extending credit to clients through various lending commitments; providing short or long-term funding that is secured by physical or financial collateral whose value may at times be insufficient to fully cover the loan repayment amount; and posting margin and/or collateral to clearing houses, clearing agencies, exchanges, banks, securities firms and other financial counterparties. Morgan Stanley incurs credit risk in traded securities and loan pools whereby the value of these assets may fluctuate based on realised or expected defaults on the underlying obligations or loans.

Morgan Stanley also incurs credit risk in the Global Wealth Management Group business segment lending to individual investors, including, but not limited to, margin and non-purpose loans collateralised by securities, residential mortgage loans and home equity lines of credit.

While Morgan Stanley believes current valuations and reserves adequately address its perceived levels of risk, there is a possibility that continued difficult economic conditions may further negatively impact its clients and its current credit exposures. In addition, as a clearing member firm, Morgan Stanley finances its customer positions and Morgan Stanley could be held responsible for the defaults or misconduct of its customers. Although Morgan

Stanley regularly reviews its credit exposures, default risk may arise from events or circumstances that are difficult to detect or foresee.

2.13 A default by another large financial institution could adversely affect financial markets generally

The commercial soundness of many financial institutions may be closely interrelated as a result of credit, trading, clearing or other relationships between the institutions. As a result, concerns about, or a default or threatened default by, one institution could lead to significant market-wide liquidity and credit problems, losses or defaults by other institutions. This is sometimes referred to as "systemic risk" and may adversely affect financial intermediaries, such as clearing agencies, clearing houses, banks, securities firms and exchanges, with which Morgan Stanley interacts on a daily basis, and therefore could adversely affect Morgan Stanley.

2.14 Operational Risk

Operational risk refers to the risk of financial or other loss, or damage to a firm's reputation, resulting from inadequate or failed internal processes, people, resources, systems or from other internal or external events (eg, internal or external fraud, legal and compliance risks, damage to physical assets, security breaches, etc). Morgan Stanley may incur operational risk across its full scope of business activities, including revenue-generating activities (eg, sales and trading), support functions (eg, information technology and trade processing) or other strategic decisions (eg, the integration of MSSB or other joint ventures, acquisitions or strategic alliances).

2.15 Morgan Stanley is subject to operational risk that could adversely affect its businesses

Morgan Stanley's businesses are highly dependent on its ability to process, on a daily basis, a large number of transactions across numerous and diverse markets in many currencies. In general, the transactions it processes are increasingly complex. Morgan Stanley performs the functions required to operate its different businesses either by itself or through agreements with third parties. Morgan Stanley relies on the ability of its employees, its internal systems and systems at technology centers operated by third parties to process a high volume of transactions.

Morgan Stanley also faces the risk of operational failure or termination of any of the clearing agents, exchanges, clearing houses or other financial intermediaries it uses to facilitate its securities transactions. In the event of a breakdown or improper operation of its or any third party's systems or improper or unauthorised action by third parties or its employees, Morgan Stanley could suffer financial loss, an impairment to its liquidity, a disruption of its businesses, regulatory sanctions or damage to its reputation.

Morgan Stanley's operations rely on the secure processing, storage and transmission of confidential and other information in its computer systems and may be vulnerable to unauthorised access, mishandling or misuse, computer viruses or malware, cyber attacks and other events that could have a security impact on such systems. If one or more of such events occur, this potentially could jeopardise Morgan Stanley's or its clients' or counterparties' personal, confidential, proprietary or other information processed and stored in, and transmitted through, its computer systems. Furthermore, such events could cause interruptions or malfunctions in Morgan Stanley's, its clients', its counterparties' or third parties' operations, which could result in reputational damage, litigation or regulatory fines or penalties not

covered by insurance maintained by Morgan Stanley, or adversely affect its business, financial condition or results of operations.

Despite the business contingency plans Morgan Stanley has in place, its ability to conduct business may be adversely affected by a disruption in the infrastructure that supports its business and the communities where it is located. This may include a disruption involving physical site access, terrorist activities, disease pandemics, catastrophic events, electrical, environmental, communications or other services used by Morgan Stanley, its employees or third parties with whom Morgan Stanley conducts business.

2.16 **Legal and Regulatory Risk**

Legal and compliance risk includes the risk of exposure to fines, penalties, judgments, damages and/or settlements in connection with regulatory or legal actions as a result of non-compliance with applicable legal or regulatory requirements or litigation. Legal risk also includes contractual and commercial risk such as the risk that a counterparty's performance obligations will be unenforceable. In today's environment of rapid and possibly transformational regulatory change, Morgan Stanley also views regulatory change as a component of legal risk.

2.17 **The financial services industry is subject to extensive regulation, which is undergoing major changes that will impact Morgan Stanley's business**

Like other major financial services firms, Morgan Stanley is subject to extensive regulation by U.S. federal and state regulatory agencies and securities exchanges and by regulators and exchanges in each of the major markets where it operates and faces the risk of investigations and proceedings by governmental and self-regulatory agencies in all countries in which Morgan Stanley conducts its business. Interventions by authorities may result in adverse judgments, settlements, fines, penalties, injunctions or other relief. In addition to the monetary consequences, these measures could, for example, impact Morgan Stanley's ability to engage in, or impose limitations on, certain of its businesses. The number of these investigations and proceedings, as well as the amount of penalties and fines sought, has increased substantially in recent years with regard to many firms in the financial services industry, including Morgan Stanley. Significant regulatory action against Morgan Stanley could materially adversely affect its business, financial condition or results of operations or cause Morgan Stanley significant reputational harm, which could seriously harm its business. The Dodd-Frank Act also provides a bounty to whistleblowers who present the SEC with information related to securities laws violations that leads to a successful enforcement action. As a result of this bounty, it is possible Morgan Stanley could face an increased number of investigations by the SEC.

In response to the financial crisis, legislators and regulators, both in the U.S. and worldwide, have adopted, or are currently considering enacting, financial market reforms that have resulted and could result in major changes to the way Morgan Stanley's global operations are regulated. In particular, as a result of the Dodd-Frank Act, Morgan Stanley is subject to significantly revised and expanded regulation and supervision, to more intensive scrutiny of Morgan Stanley's businesses and any plans for expansion of those businesses to new activities limitations, to a systemic risk regime which will impose especially high capital and liquidity requirements, and to comprehensive new derivatives regulation. Certain portions of the Dodd-Frank Act were effective immediately, while other portions will be effective only following rulemaking and extended transition periods, but many of these changes could in the future materially impact the profitability of Morgan Stanley's businesses, the value of assets it holds,

expose it to additional costs, require changes to business practices or force Morgan Stanley to discontinue businesses, could adversely affect its ability to pay dividends, or could require it to raise capital, including in ways that may adversely impact its shareholders or creditors. While there continues to be uncertainty about the exact impact of these changes, we do know that Morgan Stanley will be subject to a more complex regulatory framework, and will incur costs to comply with new requirements as well as to monitor for compliance in the future.

For example, the Volcker Rule provision of the Dodd-Frank Act will have an impact on Morgan Stanley, including potentially limiting various aspects of Morgan Stanley's business. Regulators have proposed regulations to implement the substantive Volcker Rule provisions and comments were due by 13 February 2012. It is unclear whether final rules will be in place by 21 July 2012 when the Volcker Rule is to become effective. Even with the publication of proposed rules, however, it is still too early to determine any additional limitations on Morgan Stanley beyond the restriction on standalone proprietary trading. There remains considerable uncertainty about the interpretation of the proposed rules, and Morgan Stanley is also unable to predict what the final version of the rules will be or the impact they may have on Morgan Stanley's businesses. Morgan Stanley is closely monitoring regulatory developments related to the Volcker Rule, and when the regulations are final, Morgan Stanley will be in a position to complete a review of its relevant activities and make plans to implement compliance with the Volcker Rule.

2.18 The financial services industry faces substantial litigation and is subject to regulatory investigations, and Morgan Stanley may face damage to its reputation and legal liability

Morgan Stanley has been named, from time to time, as a defendant in various legal actions, including arbitrations, class actions, and other litigation, as well as investigations or proceedings brought by regulatory agencies, arising in connection with its activities as a global diversified financial services institution. Certain of the actual or threatened legal or regulatory actions include claims for substantial compensatory and/or punitive damages, claims for indeterminate amounts of damages, or may result in penalties, fines, or other results adverse to Morgan Stanley. In some cases, the issuers that would otherwise be the primary defendants in such cases are bankrupt or in financial distress. Like any large corporation, Morgan Stanley is also subject to risk from potential employee misconduct, including non-compliance with policies and improper use or disclosure of confidential information.

Substantial legal liability could materially adversely affect Morgan Stanley's business, financial condition or results of operations or cause it significant reputational harm, which could seriously harm Morgan Stanley's business. For example, recently, the level of litigation activity focused on residential mortgage and credit crisis related matters has increased materially in the financial services industry. As a result, Morgan Stanley has been and expects that it may continue to become, the subject of increased claims for damages and other relief regarding residential mortgages and related securities in the future and there can be no assurance that additional material losses will not be incurred from residential mortgage claims that have not yet been notified to Morgan Stanley or are not yet determined to be material.

2.19 Morgan Stanley's business, financial condition and results of operations could be adversely affected by governmental fiscal and monetary policies

Morgan Stanley is affected by fiscal and monetary policies adopted by regulatory authorities and bodies of the U.S. and other governments. For example, the actions of the Fed and international central banking authorities directly impact Morgan Stanley's cost of funds for

lending, capital raising and investment activities and may impact the value of financial instruments Morgan Stanley holds. In addition, such changes in monetary policy may affect the credit quality of Morgan Stanley's customers. Changes in domestic and international monetary policy are beyond Morgan Stanley's control and difficult to predict.

2.20 **Morgan Stanley's commodities activities subject it to extensive regulation, potential catastrophic events and environmental risks and regulation that may expose it to significant costs and liabilities**

In connection with the commodities activities in Morgan Stanley's Institutional Securities business segment, Morgan Stanley engages in the production, storage, transportation, marketing and trading of several commodities, including metals (base and precious), agricultural products, crude oil, oil products, natural gas, electric power, emission credits, coal, freight, liquefied natural gas and related products and indices. In addition, Morgan Stanley is an electricity power marketer in the U.S. and owns electricity generating facilities in the U.S. and Europe; Morgan Stanley owns TransMontaigne Inc. and its subsidiaries, a group of companies operating in the refined petroleum products marketing and distribution business; and it owns a minority interest in Heidmar Holdings LLC, which owns a group of companies that provide international marine transportation and U.S. marine logistics services. As a result of these activities, Morgan Stanley is subject to extensive and evolving energy, commodities, environmental, health and safety and other governmental laws and regulations. In addition, liability may be incurred without regard to fault under certain environmental laws and regulations for the remediation of contaminated areas. Further, through these activities Morgan Stanley is exposed to regulatory, physical and certain indirect risks associated with climate change. Morgan Stanley's commodities business also exposes it to the risk of unforeseen and catastrophic events, including natural disasters, leaks, spills, explosions, release of toxic substances, fires, accidents on land and at sea, wars and terrorist attacks that could result in personal injuries, loss of life, property damage, and suspension of operations.

Although Morgan Stanley has attempted to mitigate its pollution and other environmental risks by, among other measures, adopting appropriate policies and procedures for power plant operations, monitoring the quality of petroleum storage facilities and transport vessels and implementing emergency response programs, these actions may not prove adequate to address every contingency. In addition, insurance covering some of these risks may not be available, and the proceeds, if any, from insurance recovery may not be adequate to cover liabilities with respect to particular incidents. As a result, Morgan Stanley's financial condition, results of operations and cash flows may be adversely affected by these events.

Morgan Stanley is engaged in discussions with the Fed regarding our commodities activities, as the Bank Holding Company Act (the **BHC Act**), provides a grandfather exemption for "activities related to the trading, sale or investment in commodities and underlying physical properties," provided that Morgan Stanley was engaged in "any of such activities as of September 30, 1997 in the United States" and provided that certain other conditions that are within Morgan Stanley's reasonable control are satisfied. If the Fed were to determine that any of Morgan Stanley's commodities activities did not qualify for the BHC Act grandfather exemption, then Morgan Stanley would likely be required to divest any such activities that did not otherwise conform to the BHC Act by the end of any extensions of the BHC Act grace period.

Morgan Stanley also expects the other laws and regulations affecting its commodities business to increase in both scope and complexity. During the past several years, intensified scrutiny of certain energy markets by federal, state and local authorities in the U.S. and

abroad and the public has resulted in increased regulatory and legal enforcement, litigation and remedial proceedings involving companies engaged in the activities in which Morgan Stanley is engaged. For example, the U.S. and the EU have increased their focus on the energy markets which has resulted in increased regulation of companies participating in the energy markets, including those engaged in power generation and liquid hydrocarbons trading. In addition, new regulation of OTC derivatives markets in the U.S. and similar legislation proposed or adopted abroad will impose significant new costs and impose new requirements on Morgan Stanley's commodities derivatives activities. Morgan Stanley may incur substantial costs or loss of revenue in complying with current or future laws and regulations and its overall businesses and reputation may be adversely affected by the current legal environment. In addition, failure to comply with these laws and regulations may result in substantial civil and criminal fines and penalties.

2.21 A failure to address conflicts of interest appropriately could adversely affect Morgan Stanley's businesses

As a global financial services firm that provides products and services to a large and diversified group of clients, including corporations, governments, financial institutions and individuals, Morgan Stanley faces potential conflicts of interest in the normal course of business. For example, potential conflicts can occur when there is a divergence of interests between Morgan Stanley and a client, among clients, or between an employee on the one hand and Morgan Stanley or a client on the other. Morgan Stanley has policies, procedures and controls that are designed to address potential conflicts of interest. However, identifying and mitigating potential conflicts of interest can be complex and challenging, and can become the focus of media and regulatory scrutiny. Indeed, actions that merely appear to create a conflict can put Morgan Stanley's reputation at risk even if the likelihood of an actual conflict has been mitigated. It is possible that potential conflicts could give rise to litigation or enforcement actions, which may lead to Morgan Stanley's clients being less willing to enter into transactions in which a conflict may occur and could adversely affect Morgan Stanley's businesses.

Morgan Stanley's regulators have the ability to scrutinise its activities for potential conflicts of interest, including through detailed examinations of specific transactions. In addition, Morgan Stanley's status as a bank holding company supervised by the Fed subjects it to direct Fed scrutiny with respect to transactions between Morgan Stanley's domestic subsidiary banks and their affiliates.

Risk Management

2.22 Morgan Stanley's hedging strategies and other risk management techniques may not be fully effective in mitigating its risk exposure in all market environments or against all types of risk

Morgan Stanley has devoted significant resources to develop its risk management policies and procedures and expects to continue to do so in the future. Nonetheless, Morgan Stanley's hedging strategies and other risk management techniques may not be fully effective in mitigating its risk exposure in all market environments or against all types of risk, including risks that are unidentified or unanticipated. Some of Morgan Stanley's methods of managing risk are based upon the use of observed historical market behaviour. As a result, these methods may not predict future risk exposures, which could be significantly greater than the historical measures indicate. For example, market conditions over the last several years have involved unprecedented dislocations and highlight the limitations inherent in using historical

information to manage risk. Management of market, credit, liquidity, operational, legal and regulatory risks requires, among other things, policies and procedures to record properly and verify a large number of transactions and events, and these policies and procedures may not be fully effective. Morgan Stanley's trading risk management strategies and techniques also seek to balance its ability to profit from trading positions with its exposure to potential losses. While Morgan Stanley employs a broad and diversified set of risk monitoring and risk mitigation techniques, those techniques and the judgments that accompany their application cannot anticipate every economic and financial outcome or the timing of such outcomes. Morgan Stanley may, therefore, incur losses in the course of its trading activities.

Competitive Environment

2.23 Morgan Stanley faces strong competition from other financial services firms, which could lead to pricing pressures that could materially adversely affect its revenue and profitability

The financial services industry, and all aspects of Morgan Stanley's businesses, are intensely competitive, and Morgan Stanley expects them to remain so. Morgan Stanley competes with commercial banks, brokerage firms, insurance companies, sponsors of mutual funds, hedge funds, energy companies and other companies offering financial services in the U.S., globally and through the internet. Morgan Stanley competes on the basis of several factors, including transaction execution, capital or access to capital, products and services, innovation, reputation, risk appetite and price. Over time, certain sectors of the financial services industry have become more concentrated, as institutions involved in a broad range of financial services have been acquired by or merged into other firms or have declared bankruptcy. Such changes could result in Morgan Stanley's remaining competitors gaining greater capital and other resources, such as the ability to offer a broader range of products and services and geographic diversity. Morgan Stanley has experienced and may continue to experience pricing pressures as a result of these factors and as some of its competitors seek to increase market share by reducing prices.

2.24 Automated trading markets may adversely affect Morgan Stanley's business and may increase competition

Morgan Stanley has experienced intense price competition in some of its businesses in recent years. In particular, the ability to execute securities trades electronically on exchanges and through other automated trading markets has increased the pressure on trading commissions. The trend toward direct access to automated, electronic markets will likely continue. Morgan Stanley has experienced and it is likely that it will continue to experience competitive pressures in these and other areas in the future as some of its competitors may seek to obtain market share by reducing prices.

2.25 Morgan Stanley's ability to retain and attract qualified employees is critical to the success of its business and the failure to do so may materially adversely affect its performance

Morgan Stanley's people are its most important resource and competition for qualified employees is intense. In order to attract and retain qualified employees, Morgan Stanley must compensate such employees at market levels. Typically, those levels have caused employee compensation to be Morgan Stanley's greatest expense as compensation is highly variable and changes based on business and individual performance and market conditions. If Morgan Stanley is unable to continue to attract and retain highly qualified employees, or do so at rates

necessary to maintain its competitive position, or if compensation costs required to attract and retain employees become more expensive, Morgan Stanley's performance, including its competitive position, could be materially adversely affected. The financial industry has and may continue to experience more stringent regulation of employee compensation, including limitations relating to incentive-based compensation, clawback requirements and special taxation, which could have an adverse effect on Morgan Stanley's ability to hire or retain the most qualified employees.

International Risk

2.26 Morgan Stanley is subject to numerous political, economic, legal, operational, franchise and other risks as a result of its international operations which could adversely impact its businesses in many ways

Morgan Stanley is subject to political, economic, legal, tax, operational, franchise and other risks that are inherent in operating in many countries, including risks of possible nationalisation, expropriation, price controls, capital controls, exchange controls, increased taxes and levies and other restrictive governmental actions, as well as the outbreak of hostilities or political and governmental instability. In many countries, the laws and regulations applicable to the securities and financial services industries are uncertain and evolving, and it may be difficult for Morgan Stanley to determine the exact requirements of local laws in every market. Morgan Stanley's inability to remain in compliance with local laws in a particular market could have a significant and negative effect not only on Morgan Stanley's business in that market but also on Morgan Stanley's reputation generally. Morgan Stanley is also subject to the enhanced risk that transactions it structures might not be legally enforceable in all cases.

Various emerging market countries have experienced severe political, economic and financial disruptions, including significant devaluations of their currencies, capital and currency exchange controls, high rates of inflation and low or negative growth rates in their economies. Crime and corruption, as well as issues of security and personal safety, also exist in certain of these countries. These conditions could adversely impact Morgan Stanley's businesses and increase volatility in financial markets generally.

The emergence of a disease pandemic or other widespread health emergency, or concerns over the possibility of such an emergency as well as natural disasters, terrorist activities or military actions, could create economic and financial disruptions in emerging markets and other areas throughout the world, and could lead to operational difficulties (including travel limitations) that could impair Morgan Stanley's ability to manage its businesses around the world.

As a U.S. company, Morgan Stanley is required to comply with the economic sanctions and embargo programs administered by OFAC and similar multi-national bodies and governmental agencies worldwide and the U.S. Foreign Corrupt Practices Act (**FCPA**). A violation of a sanction or embargo program or of the FCPA or similar laws prohibiting certain payments to governmental officials, such as the U.K. Bribery Act could subject Morgan Stanley, and individual employees, to a regulatory enforcement action as well as significant civil and criminal penalties.

Acquisition and Joint Venture Risk

2.27 Morgan Stanley may be unable to fully capture the expected value from acquisitions, joint ventures, minority stakes and strategic alliances

In connection with past or future acquisitions, joint ventures (including MSSB) or strategic alliances (including with MUFG), Morgan Stanley faces numerous risks and uncertainties combining or integrating the relevant businesses and systems, including the need to combine accounting and data processing systems and management controls and to integrate relationships with clients, trading counterparties and business partners. In the case of joint ventures and minority stakes, Morgan Stanley is subject to additional risks and uncertainties because it may be dependent upon, and subject to liability, losses or reputational damage relating to, systems, controls and personnel that are not under Morgan Stanley's control. For example, the ownership arrangements relating to Morgan Stanley's joint venture in Japan with MUFG of their respective investment banking and securities businesses are complex. MUFG and Morgan Stanley have integrated their respective Japanese securities businesses by forming two joint venture companies, Mitsubishi UFJ Morgan Stanley Securities Co., Ltd. (MUMSS) and Morgan Stanley MUFG Securities, Co., Ltd. (MSMS). During the first quarter of 2011, Morgan Stanley recorded a loss of U.S.\$655 million arising from its 40% stake in MUMSS related to certain fixed income trading positions at MUMSS, which is a subsidiary of MUFG that is controlled and risk managed by MUFG. While MUFG contributed U.S.\$370 million in capital to MUMSS in connection with the trading losses, additional losses could be incurred by MUMSS in the future.

In addition, conflicts or disagreements between Morgan Stanley and any of its joint venture partners may negatively impact the benefits to be achieved by the relevant joint venture.

There is no assurance that any of Morgan Stanley's acquisitions will be successfully integrated or yield all of the positive benefits anticipated. If Morgan Stanley is not able to integrate successfully its past and future acquisitions, there is a risk that Morgan Stanley's results of operations, financial condition and cash flows may be materially and adversely affected.

Certain of Morgan Stanley's business initiatives, including expansions of existing businesses, may bring Morgan Stanley into contact, directly or indirectly, with individuals and entities that are not within its traditional client and counterparty base and may expose Morgan Stanley to new asset classes and new markets. These business activities expose Morgan Stanley to new and enhanced risks, greater regulatory scrutiny of these activities, increased credit-related, sovereign and operational risks, and reputational concerns regarding the manner in which these assets are being operated or held.

3. RISKS RELATING TO THE NOTES

General risks

3.1 Investor suitability

Investment in the Notes are only suitable for investors who:

- (i) have sufficient knowledge, experience and access to professional advisers to make their own legal, tax, accounting and financial evaluation of the merits and risks of investment in such Notes and consider the suitability of such Notes as an investment

in light of their own circumstances and financial condition and that of any accounts for which they are acting;

- (ii) are capable of bearing the economic risk of an investment in the Notes;
- (iii) are acquiring the Notes for their own account for investment, not with a view to resale, distribution or other disposition of the Notes (subject to any applicable law requiring that the disposition of the investor's property be within its control); and
- (iv) recognise that it may not be possible to make any transfer of the Notes for a substantial period of time, if at all, as the Notes may be illiquid and not readily realisable.

None of the Issuer, the Guarantor, the Arranger, the Dealer, the Trustee nor any other party to any Transaction Document is providing legal or tax advice to investors. Investors are advised to consult with their own legal and tax advisors as to the tax consequences of the purchase, ownership, transfer or exercise of any Note in any relevant jurisdiction. In particular, no representation is made as to the manner in which payments under the Notes would be characterised by any relevant taxing authority.

3.2 **Recourse and Credit risk**

The security for the Notes will be limited to the Collateral Assets held by the Issuer, claims of the Issuer against the Seller under the Transfer Agreements, amounts standing to the credit of the relevant Series Account (as to which see "*Risks relating to the Collateral Assets*") and amounts attributable to the applicable Series standing to the credit of the Clearing Accounts. Noteholders are exposed, among other things, to the creditworthiness of the Guarantor (as to which see "*Risks relating to the Guarantor*" above), the Issuer (as to which see "*Risks relating to the Issuer*" above), the Sellers, the Principal Paying Agent, the other Paying Agents, the Account Bank and the obligor(s) in respect of the Collateral Assets (each, an **Obligor**).

The Notes of each Series are direct, senior obligations of the Issuer and each Guarantee is the direct, senior, unsecured obligation of the Guarantor, and in each case not of the officers, members, directors, employees, security holders or incorporator of the Issuer, or the Guarantor, the Dealer, any Seller or the obligor(s) in respect of any Collateral Assets or their respective successors or assigns.

3.3 **Independent review and advice**

Each prospective purchaser of Notes must determine, based on its own independent review (including as to the financial condition and affairs and its own appraisal of the creditworthiness of the Issuer and the Guarantor) and such professional advice (including, without limitation, tax, accounting, credit, legal and regulatory advice) as it deems appropriate under the circumstances, whether an investment in the Notes is appropriate in its particular circumstances.

In so doing, and without restricting the generality of the preceding paragraph, such prospective purchaser must determine that its acquisition and holding of the Notes (i) is fully consistent with its (or if it is acquiring the Notes in a fiduciary capacity, the beneficiary's) financial needs, objectives and condition, (ii) complies and is fully consistent with all investment policies, guidelines and restrictions applicable to it (whether acquiring the Notes

as principal or in a fiduciary capacity) and (iii) is a fit, proper and suitable investment for it (or if it is acquiring the Notes in a fiduciary capacity, for the beneficiary), notwithstanding the clear and substantial risks inherent in investing in or holding the Notes. None of the Issuer, the Guarantor, the Trustee, the Dealer or any of their respective affiliates is acting as an investment adviser, or assumes any fiduciary obligation, to any purchaser of Notes.

3.4 This Base Prospectus is not intended to provide the basis of any credit or other evaluation or should be considered as a recommendation or constituting an invitation or offer that any recipient of this Base Prospectus should purchase any Notes. The Trustee and the Dealer expressly do not undertake to review the financial condition or affairs of the Issuer, the Guarantor, any Seller or any relevant Obligor(s) in respect of the Collateral Assets for any Series of Notes during the life of the Programme.

3.5 **Business relationships**

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

3.6 **Changes in Tax Law; No Gross-Up; General**

Although currently no withholding tax should be imposed on payments of interest on the Notes or payments under the relevant Guarantee, there can be no assurance that the law, regulations or any interpretation thereof will not change. In the event that any withholding tax is imposed on payments of interest on the Notes, payments under the relevant Guarantee or payments under a Transfer Agreement, the Issuer or the Guarantor, as applicable, will not "gross-up" payments to the holders of such Notes. The Noteholders will bear such tax or withholding through a reduction of the amounts available for payment under the Notes, unless otherwise specified in the applicable Final Terms.

3.7 **Recent Legislation**

Recent legislation generally imposes a 30% U.S. withholding tax on payments to certain foreign entities (including financial intermediaries) of U.S.-source interest or dividends, and on the gross proceeds from the disposition "of any property of a type which can produce" U.S.-source interest or dividends, unless various U.S. information reporting and due diligence requirements have been satisfied. This withholding tax generally would apply to payments of interest on a Note made after 31 December, 2013 and payments of gross proceeds from the sale or other disposition of a Note after 31 December, 2014. Notes issued on or before 31 December, 2012 should not be subject to this legislation. The scope and application of this legislation are unclear because regulations thereunder have not yet been promulgated in final form. Investors are encouraged to consult with their own tax advisors regarding the possible implications of this legislation on their investment in the Notes.

3.8 **Legality of purchase**

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

3.9 **Credit Ratings**

The credit rating (if any) assigned to the Notes is based solely on the credit quality of the Guarantor and not the Issuer or the Collateral Assets. Credit ratings do not fully reflect all risks of an investment. In addition, prospective purchasers should note that rating agencies may fail to make timely changes in credit ratings in response to subsequent events, and the credit quality of the Guarantor may be worse than a credit rating indicates.

In general, European regulated investors are restricted under Regulation (EC) No. 1060/2009 (as amended) (the **CRA Regulation**) from using credit ratings for regulatory purposes, unless such ratings are issued by a credit rating agency established in the EU and registered under the CRA Regulation (and such registration has not been withdrawn or suspended), subject to transitional provisions that apply in certain circumstances whilst the registration application is pending. Such general restriction will also apply in the case of credit ratings issued by non-EU credit rating agencies, unless the relevant credit ratings are endorsed by an EU-registered credit rating agency or the relevant non-EU rating agency is certified in accordance with the CRA Regulation (and such endorsement action or certification, as the case may be, has not been withdrawn or suspended). The list of registered and certified rating agencies published by the European Securities and Markets Authority (**ESMA**) on its website in accordance with the CRA Regulation is not conclusive evidence of the status of the relevant rating agency included in such list, as there may be delays between certain supervisory measures being taken against a relevant rating agency and the publication of the updated ESMA list. Certain information with respect to the credit rating agencies and ratings will be disclosed in the Final Terms.

3.10 **Limited Liquidity and Restrictions on Transfer**

Although there is currently a limited market for Notes representing collateralised securities similar to the Notes, there is currently no market for the Notes themselves. Neither Morgan Stanley nor any other member of the Morgan Stanley Group intends to make a market in the Notes. There can be no assurance that any secondary market for any of the Notes will develop or, if a secondary market does develop, that it will provide the Noteholders with liquidity of investment or that it will continue for the life of such Notes.

If a secondary market was to develop it would be affected by, amongst other things, supply and demand for the Notes, and, accordingly, it should not be assumed that there will be a significant correlation between the market value of the Notes of a Series and the market value of the Collateral Assets relating to such Series.

The Notes and the relevant Guarantee have not been and will not be registered under the Securities Act or with any securities regulatory authority of any state or other jurisdiction of the United States. Consequently, the Notes may not be offered, sold, resold, delivered or transferred within the United States or to, or for the account or benefit of, U.S. Persons (as defined in Regulation S). In addition, the Issuer has not been and will not be registered as an

"investment company" under the 1940 Act. Accordingly, the Notes may only be sold to a person that is an Eligible Purchaser. The Issuer may compel any beneficial owner of an interest in the Notes to sell its interest in such Notes, or may sell such interest on behalf of such holder, if such holder is not an Eligible Purchaser. See "*Subscription and Sale and Transfer Restrictions*" and "*No Ownership by U.S. Persons*" below.

3.11 **Noteholders' Resolutions**

The Trust Deed constituted by the Trust Instrument relating to each Series includes provisions for the passing of Resolutions (whether at a Noteholders' meeting by way of vote or by Written Resolution) of the Noteholders in respect of (among any other matters) amendments to the Conditions of the Notes and/or the Transaction Documents. Such provisions include, among other things, (i) quorum requirements for the holding of Noteholders' meetings and (ii) voting thresholds required to pass Resolutions at such meetings (or through Written Resolutions). The quorum required for a meeting of Noteholders (other than an adjourned meeting) to pass an Ordinary Resolution or an Extraordinary Resolution is one or more persons holding or representing not less than, respectively, 50% or 66 2/3% of the aggregate of the Principal Amount Outstanding of the Notes. In both cases, the quorum is less at an adjourned meeting. The voting threshold at any Noteholders' meeting in respect of an Ordinary Resolution or an Extraordinary Resolution of all Noteholders is, respectively, more than 50% or at least 66 2/3% of the aggregate of the Principal Amount Outstanding of the Notes represented at the meeting. Accordingly, it is likely that, at any meeting of the Noteholders, an Ordinary Resolution or an Extraordinary Resolution may be passed with less than 50% or 66 2/3% respectively of all the Noteholders. See Condition 18 (*Meetings of Noteholders, Modification, Waiver and Substitution*). Any Ordinary Resolution or Extraordinary Resolution duly passed by Noteholders of a Series will bind all the Noteholders of such Series.

3.12 **Voting Rights upon an Event of Default and Enforcement**

If an Event of Default occurs and is continuing, the Trustee may, at its discretion and shall, if so directed by the Noteholders of a Series acting by Extraordinary Resolution (subject, in each case, to being indemnified and/or secured and/or prefunded by the relevant Noteholders to its satisfaction), give notice to the Issuer that all the Notes of such Series are to be immediately due and payable. At any time after the Notes of a Series become due and payable and the security under the applicable Trust Deed becomes enforceable, the Trustee may, at its discretion, and shall if so directed by the Noteholders acting by Extraordinary Resolution (subject as aforesaid), institute such proceedings against the Issuer as it may think fit to enforce the terms of the applicable Trust Deed and the Notes and pursuant and subject to the terms of the applicable Trust Deed and the Notes of such Series, realise and/or otherwise liquidate or sell the Collateral Assets in whole or in part and/or take such action as may be permitted under applicable laws against any Obligor in respect of the Collateral Assets and/or take any other action to enforce the security over the Collateral Assets. See Conditions 12 (*Events of Default*) and 13 (*Enforcement*).

3.13 **Account Bank Risk**

The Bank of New York Mellon, London Branch is acting as Account Bank. Prospective investors should note that the Issuer will also be exposed to credit risk of the Account Bank in respect of the funds standing to the credit of the Series Accounts and the Seller Derivatives Account. Any default in its payment obligations in respect of the Series Accounts or the

Seller Derivatives Account by the Account Bank may have a material adverse effect on the Issuer.

3.14 Clearing Accounts

Certain monies to be transferred into a Series Account in respect of a Series may be held in the Clearing Accounts for a short period of time pending such transfer. A separate Clearing Account will be opened in respect of each currency in which a Series of Notes is denominated. Each Clearing Account is a general clearing account of the Issuer with the Account Bank in respect of all Series of Notes into which amounts in respect of any Series of Notes denominated in the same currency as such Clearing Account may be deposited prior to being transferred to the applicable Series Account or the applicable Seller. Amounts deposited into the Clearing Accounts are intended to be transferred to the applicable Series Account or to the applicable Seller, in each case, in an amount applicable to the Series to which such balances relate by no later than the close of business on the Business Day on which they are deposited into the Clearing Account. Although the Noteholders have the benefit of security over the Clearing Accounts, an investor should note that the security granted by the Issuer over these accounts is granted to the Trustee on behalf of the Secured Parties in respect of all Series of Notes and not just the Series of Notes to which such amounts relate. However, the Issuer is obliged to create and maintain on a daily basis a ledger in respect of the Clearing Accounts which will show the amounts standing to the credit of the Clearing Accounts that are attributable to each Series of Notes on any day and the enforcement of security will determine the portion of such amounts which will be allocated to each Series.

3.15 No Fiduciary Role

None of the Issuer, the Guarantor, the Arranger, the Trustee, the Agents, any Dealer, any of the parties to the Transaction Documents or any of their respective affiliates is acting as an investment advisor, and none of them (other than the Trustee) assumes any fiduciary obligation, to any purchaser of Notes.

None of the Issuer, the Guarantor, the Arranger, the Trustee, the Agents, any Dealer or any of the parties to the Transaction Documents assumes any responsibility for conducting or failing to conduct any investigation into the business, financial condition, prospects, creditworthiness, status and/or affairs of an Obligor of a Collateral Asset.

None of such parties makes any representation or warranty, express or implied, as to any of such matters.

3.16 Provision of Information

The Issuer, the Guarantor, the parties to the Transaction Documents and any of their respective affiliates and, in particular, each applicable Seller as originator of the Collateral Assets, whether by virtue of the types of relationships described herein or otherwise, may possess information in relation to any Obligor, any affiliate of an Obligor or any guarantor or an Obligor that is or may be material in the context of these Notes and that may or may not be publicly available or known. Many loan agreements contain restrictions on the ability of the originator of such loan to disclose information regarding the Obligor thereunder. The Seller may be restricted by such agreements from disclosing information regarding the Obligors to the Issuer. The Notes will not create any obligation on the part of any of the Issuer, the parties to the Transaction Documents and any of their respective affiliates to disclose any such relationship or information (whether or not confidential) other than any such information

contained in the Noteholder Reports. The Issuer may be prevented from including certain information in the Noteholder Reports if the Seller is restricted from providing it due to a confidentiality agreement or clause in the documentation relating to a Collateral Asset. Each of such persons may have acquired, or during the term of the Notes may acquire, confidential information with respect to the Collateral Assets or Obligors of a Collateral Asset. None of such persons is under any obligation to make such information available to Noteholders. However, in respect of unlisted Series, the Issuer may, but will not be obliged to, enter into an agreement with Noteholders of that Series pursuant to which the Issuer will provide certain information concerning the Collateral Assets to such Noteholders subject to such Noteholders agreeing to confidentiality undertakings.

This Base Prospectus does not provide any information on the creditworthiness or likelihood of the occurrence of a default with respect to any Collateral Assets or Obligors of Collateral Assets.

3.17 Certain Conflicts of Interest between the Various Parties

Various potential and actual conflicts of interest may arise from the overall management, investment and other activities of the applicable Seller(s), their Affiliates and their clients and from the conduct by the Arranger, the Guarantor, the Collateral Agent and their Affiliates of other transactions with the Issuer. The following briefly summarises some of these conflicts, but is not intended to be an exhaustive list of all such conflicts.

Morgan Stanley or its Affiliates will have, respectively, originated the Collateral Assets at original issuance, may own equity or other securities of Obligors of Collateral Assets and will have provided investment banking services, advisory, banking and other services to Obligors of Collateral Assets.

Morgan Stanley or The Bank of New York Mellon and their respective Affiliates may also hold positions against counterparties to Tagged Derivatives which may differ to that in the Tagged Derivatives and which may represent the opposite exposure to the Tagged Derivatives and in which case, Morgan Stanley or The Bank of New York Mellon may benefit from a situation where, on the occurrence of such situation, the Proceeds from the Tagged Derivatives would be reduced.

The Arranger, the Guarantor, the Collateral Agent, the other parties to the Transaction Documents and any of their respective affiliates may deal in any obligation, including any Collateral Assets, and may accept deposits from, make loans or otherwise extend credit to, and generally engage in any kind of commercial or investment banking or other business with, any Obligor of a Collateral Asset, its affiliates, any other person or entity having obligations relating to an Obligor of a Collateral Asset or its affiliates and may act with respect to such business in the same manner as if any Notes did not exist, regardless of whether any such action might have an adverse effect (including, without limitation, any action which might give rise to a default under such Collateral Asset) on an Obligor of a Collateral Asset and/or its affiliates. Various potential and actual conflicts of interest may arise between the interests of the Noteholders, on the one hand, and some or all of the Issuer, the Arranger, the Guarantor, the Collateral Agent, the other parties to the Transaction Documents and any of their respective affiliates, on the other hand. None of the Issuer, the Arranger, the Guarantor, the parties to the Transaction Documents nor any of their respective affiliates is required to resolve such conflicts of interest in favour of the Noteholders and may pursue actions and take such steps that it deems necessary or appropriate to protect its interests without regard to the consequences for the Noteholders.

Various potential and actual conflicts of interest may arise between the interests of Morgan Stanley or its Affiliates as originator or underwriter of a Collateral Asset, on the one hand, and the Issuer, the Guarantor, and Noteholders, on the other hand. Morgan Stanley and its Affiliates are not required to resolve such conflicts of interest in favour of the Noteholders and may pursue actions and take such steps that it deems necessary or appropriate to protect its interests without regard to the consequences for the Noteholders.

4. RISKS RELATING TO THE COLLATERAL ASSETS

4.1 Valuation of the Collateral Assets, Margin Transfers and Substitutions

The decision by any prospective holder of a Series of Notes to invest in such Notes should be based, among other things, on the criteria which each Collateral Asset is required to satisfy, as disclosed in this Base Prospectus and supplemented by the Final Terms relating to the particular Series of Notes. This Base Prospectus does not contain any information regarding the individual Collateral Assets on which the Notes will be secured from time to time. Purchasers of any of the Notes will not generally have an opportunity to evaluate for themselves the relevant economic, financial and other information regarding the Collateral Assets and, accordingly, will be dependent upon the judgment and ability of the Seller to apply the criteria in respect of each Series on the Issue Date and during the life of the Notes.

None of the Issuer, the Guarantor, the Arranger or the Dealer has made any investigation into the Obligors of the Collateral Assets for the purpose of an issuance of Notes. The value of the Collateral Assets relating to a Series may fluctuate from time to time. Subject to the margin transfer provisions described below, none of the Issuer, the Guarantor, the Trustee, any other Agent, the Dealer or any of their affiliates in each case, relating to a Series has any liability to the Noteholders as to the amount or value of, or any decrease in the value of or inability to obtain a valuation of, the Collateral Assets from time to time (without prejudice to the Guarantor's obligations under the relevant Guarantee).

As the Collateral Assets may comprise illiquid assets, it may be difficult to accurately and reliably value such Collateral Assets. Given the Market Value is determined by the Sellers in their sole discretion and is not required to be verified by any third party quotations or pricing services (unless otherwise specified in the applicable Final Terms that such determinations shall be made by reference to third party quotations) and therefore such value may be higher (or lower) than a Noteholder or the market in general may ascribe to such asset at any given time, Noteholders are reliant on the accuracy of valuations as determined by the Sellers. Furthermore, given the Market Value of a Collateral Asset is so determined based on the price at which the Seller marks such Collateral Asset for its own books and records, there may be a difference between the time of a change in the value of a Collateral Asset and when such change is reflected in the Market Value. However, this risk is mitigated by the value assigned to the Collateral Assets on the books of the Sellers being updated or confirmed at the close of business on each Business Day. Please see further paragraph 2.8 "*Morgan Stanley may experience declines in the value of its financial instruments and other losses related to volatile and illiquid market conditions*".

Under the margin transfer provisions of the applicable Collateral Transfer Agreement, the value of the Collateral Assets relating to a Series of Notes will be determined on each Business Day by the applicable Sellers based on valuations pursuant to and consistent with the methodology utilised by such Sellers to mark such Collateral Assets for their own books and records and the Sellers will be required to substitute Collateral Assets in order to effect a Margin Transfer if either the Issuer or the Sellers has a Net Exposure to the other party under

the applicable Collateral Transfer Agreement. Noteholders will be subject to the risk of the Market Value of the Collateral Assets falling during the time before which a required collateral delivery is made in order to effect a Margin Transfer. This risk is mitigated in part by the frequency of the obligation to substitute Collateral Assets and transfer further Collateral Assets to the Issuer by way of margin maintenance which will occur on each Business Day.

Following an Event of Default under the Notes the Trustee shall enforce the security over, *inter alia*, the Collateral Assets, the Issuer's rights to any Series Accounts and the Clearing Accounts and the Issuer's rights under the Transfer Agreements. The non-Defaulting Party will be obliged to value the Collateral Assets to determine whether the Sellers are to make a termination payment under the Collateral Transfer Agreement to the Issuer. Any such termination payment will form part of the security granted to the Noteholders by the Issuer. Noteholders should note that in certain circumstances pursuant to the Collateral Transfer Agreement, the non-Defaulting Party will determine the Market Value of the Collateral Assets for such purposes acting in a commercially reasonable manner and in good faith but subject to no other set parameters.

As the Collateral Assets may comprise illiquid assets, there can be no assurance that, upon the enforcement of security, the Trustee or any Receiver will be able to realise such Collateral Assets at the current Market Value assigned to such Collateral Assets. There may not at the time of such enforcement be a liquid market or any market in such Collateral Assets which may adversely affect the amounts realised from the sale of such Collateral Assets and therefore the return on the Notes.

As stated above, the Issuer's ability to meet its obligations under the Notes will depend (i) on the relevant Seller meeting its payment obligations under the applicable Transfer Agreements and (ii) on the realisable value of Collateral Assets and their Related Security and the other Mortgaged Property. Following the security becoming enforceable the Noteholders are therefore subject to the credit risk of the obligors of the Collateral Assets, as an insolvency or similar proceeding in respect of such obligors could reduce the realisable value of such Collateral Assets.

4.2 **Currency Risk**

Some or all of the Collateral Assets relating to a Series of Notes may be denominated in a different currency to those Notes. To the extent this is the case, the Issuer and, therefore, the Noteholders will be subject to foreign exchange risk. This risk will be mitigated by the obligation of the Sellers to effect Margin Transfers through the transfer of further Collateral Assets where necessary. Such margin maintenance requires the conversion of market values assigned to assets that are denominated in a currency that is different to that of the Notes of the relevant Series at the spot rate of exchange at 3.00 p.m. (New York time) for such currencies on each Business Day. As margin maintenance is required to occur on each Business Day, the Noteholders' exposure to foreign exchange risk will be reduced to an overnight risk while margin maintenance is carried out by the Sellers in accordance with the relevant Collateral Transfer Agreement and the Issuer is not in default under the Notes. However, if the Issuer is in default under the Notes and security is enforced over the Collateral Assets, or the Sellers or the Issuer fail to perform their obligations under the relevant Collateral Transfer Agreement, the foreign exchange risk may increase as the Noteholders will be exposed to any changes in exchange rates during the time it takes to enforce the security and liquidate the Collateral Assets or during the period in which such obligations are not carried out, as applicable. Changes in exchange rates during the times

specified in the immediately preceding sentence could materially adversely affect the return on the Notes.

4.3 Insolvency considerations relating to Sellers, the Issuer and the Guarantor

The ability of the Trustee to take action against the Issuer, the Guarantor or the Sellers (including in respect of the Collateral Assets) will be subject to applicable bankruptcy and other laws.

In particular, Noteholders should note the filing of a petition to begin a U.S. bankruptcy proceeding operates as an automatic stay of various actions a creditor may wish to take against the debtor including: the commencement or continuation of legal actions or proceedings to recover a claim against the debtor, enforcement of a judgment obtained against the debtor prior to filing, acts to obtain possession of property of the debtor's estate or take control thereof, actions to create, perfect or enforce any lien on the debtor's property, any act to collect a claim against the debtor and set-off of any debt owing to the debtor against any claim against the debtor. In the event of the insolvency of a Seller incorporated in the U.S. or the Issuer or the Guarantor, the operation of such a stay will delay the enforcement of claims against such Seller (including in respect of the Collateral Assets), the Issuer or the Guarantor, as applicable, which may materially adversely affect the return on the Notes and any payment under the relevant Guarantee.

4.4 Insolvency Considerations relating to Collateral Assets

Collateral Assets may be subject to various laws enacted for the protection of creditors in the countries of the jurisdictions of incorporation of Obligors and, if different, in which the Obligors conduct business and in which they hold the assets, which may adversely affect such Obligors' abilities to make payment on a full or timely basis. These insolvency considerations will differ depending on the country in which each Obligor is located or domiciled and may differ depending on whether the Obligor is a non-sovereign or a sovereign entity.

The different insolvency regimes applicable in different jurisdictions result in a corresponding variability of recovery rates for the Collateral Assets entered into by Obligors in such jurisdictions. No reliable historical data is available.

For instance, in respect of an Obligor incorporated in the United States, if a court were to find that the Obligor did not receive fair consideration or reasonably equivalent value for incurring the indebtedness constituting the Collateral Asset, in certain circumstances, such court could determine to invalidate, in whole or in part, such indebtedness as a fraudulent conveyance, to subordinate such indebtedness to existing or future creditors of the obligor or to recover amounts previously paid by the obligor in satisfaction of such indebtedness. A U.S. court in a U.S. bankruptcy or insolvency proceeding would be able to direct the recapture of any such payment from a holder of the Notes to the extent that such court has jurisdiction over such holder or its assets. Since there is no judicial precedent relating to structured securities such as the Notes, there can be no assurance that a holder of Notes will be able to avoid recapture on this basis.

In certain jurisdictions where some Obligors may be incorporated, third party creditors of a Seller may in certain circumstances obtain rights in rem in respect of amounts due under the Collateral Assets. Such rights may have priority over the rights of the Issuer to receive such amounts and may therefore be prejudicial to the Issuer's rights and interest in such Collateral Assets.

4.5 **Certain Set-off Considerations**

An Obligor to whom a Seller owes other obligations may attempt to satisfy its payment obligation in respect of a Collateral Asset by setting off its other obligations against such payment obligation. Set-off may be contractually agreed between the parties so that it will apply between certain obligations under a contract or across multiple contracts. Set-off of debts owing by an insolvent party may also occur pursuant to applicable insolvency laws where either a Seller or an Obligor is insolvent. Prior to the occurrence of an Event of Default, if an Obligor in respect of a Collateral Asset exercises such set-off in respect of a principal amount of such Collateral Asset the value and par amount of such Collateral Asset will fall which will, in turn, lead to an obligation on the applicable Sellers to replace such Collateral Asset or otherwise transfer further Collateral Assets to the Issuer in accordance with the margin maintenance provisions of the Collateral Transfer Agreement.

The risk of set-off is increased in respect of Collateral Assets the interests in which are acquired by way of a Declaration of Trust or by way of a Participation as the legal title remains with the Sellers under these transfer methods and notice of the Declaration of Trust or Participation will not be given to the Obligors. In respect of Collateral Assets which are loans, although some loan agreements contain provisions pursuant to which the relevant Obligors expressly agree to make payments in respect of the Collateral Assets without set-off or counterclaim, other loan agreements may not contain such provisions. Furthermore, it is possible that certain mandatory set-off provisions under applicable insolvency laws may be available to Obligors on a liquidation of a Seller or the Obligor. This would particularly be the case if the applicable Declaration of Trust or Participation was held to be in breach of transfer restrictions in the loan agreements.

The occurrence of set-off, whether contractual set-off or on an insolvency of a Seller or an Obligor, may reduce the amounts realised from the Collateral Assets upon an enforcement of the security in respect of the Notes.

The risk of contractual and insolvency set-off is also increased in relation to Tagged Derivatives. A Seller's counterparty under a Tagged Derivative may be able to set-off obligations it owes to the relevant Seller under such Tagged Derivative against amounts that the Seller owes it under another transaction or arrangement. This could result in the Proceeds of Tagged Derivatives being reduced upon a Trigger Event which will result in a reduction in amounts available to Noteholders upon an enforcement of security.

Please also see sub-paragraph 4.7(d) "*Tagged Derivatives*" below in respect of specific netting risks related to Tagged Derivatives.

4.6 **Recharacterisation risk as a secured loan**

It is the intention of the Issuer and the applicable Seller that the acquisitions or transfers of the Collateral Assets and the arrangements regarding Margin Transfers in the applicable Collateral Transfer Agreement be absolute and irrevocable and that it provide the Issuer with the full risks and benefits of ownership of such interests so acquired, such that the Collateral Assets would not constitute property of the Seller's estate in the event of a Seller's bankruptcy.

While the transfer arrangements in the Collateral Transfer Agreement have been structured in a way that should not be construed as the creation of a security interest in the Collateral Asset, the risk remains that such transfers could be recharacterised by a court as a loan by the Issuer to the Seller against the granting of security by the relevant Seller over the Collateral Assets.

If a court did recharacterise such transfer as a secured loan then in some jurisdictions it may require registration or completion of other formalities in order to perfect such security interest. Other than a back-up UCC financing statement which will be made in respect of the Collateral Assets to be transferred by a U.S. Seller to the Issuer, no such registration or completion of other formalities has been, or is intended to be, made.

4.7 Risks Relating to Specific Asset Classes

The following risks relate to specific asset classes constituting Collateral Assets. These risks are mitigated in part by the obligation of the Sellers to substitute Collateral Assets (where they no longer meet the requirements of the relevant Eligibility Criteria) and transfer further Collateral Assets in order to effect Margin Transfers. This requirement involves the Sellers overcollateralising the Issuer by reference to the Market Value of the Collateral Assets as determined by the Sellers on each Business Day. The obligation of the Sellers to substitute any defaulted Collateral Asset on each Business Day further mitigates the risks pertaining to the Collateral Assets.

(a) Corporate loans

The market value of the Collateral Assets that are corporate loans will generally fluctuate with, among other things, changes in prevailing interest rates, general economic conditions, the condition of certain financial markets, exchange rate fluctuations, international political events, developments or trends in any particular industry and the financial condition of the Obligors. The financial markets periodically experience substantial fluctuations in prices for corporate loans and limited liquidity for such obligations. In particular, a downturn in the market and industries in which the Obligors of such loans operate will materially impact the market value of such loans. No assurance can be made that the conditions giving rise to such price fluctuations and limited liquidity will not occur, subsist or become more acute following the applicable Issue Date.

(b) Commercial Mortgage Loans

The Collateral Assets may comprise commercial and multifamily mortgage loans (the **Commercial Mortgage Loans**). Commercial Mortgage Loans are usually secured by liens on or other security interests in respect of the respective Obligors' fee and/or leasehold or other similar interests in commercial and multifamily mortgaged properties such as regional malls, other retail space, office buildings, industrial or warehouse properties, hotels, nursing homes and senior living centres (each, a **Commercial Mortgaged Property**). In general, Commercial Mortgage Loans constitute limited recourse obligations of the related commercial mortgagor and, upon any such commercial mortgagor's default in the payment of any amount due under the related loan, the holder thereof may look only to the related Commercial Mortgaged Property or Properties.

Risks affecting real estate investments include general economic conditions, the condition of financial markets, political events, developments or trends in any particular industry and changes in prevailing interest rates. The cyclicity and leverage associated with real estate-related investments have historically resulted in periods, including significant periods, of adverse performance, including performance that may be materially more adverse than the performance associated with other investments. In addition, commercial mortgage loans generally lack standardised terms. Additional risks may be presented by the type and use of a particular commercial property. Commercial properties tend to be unique and are more difficult to value than single-family residential properties.

A commercial property may not readily be converted to an alternative use in the event that the operation of such commercial property for its original purpose becomes unprofitable and therefore the liquidation value of any such commercial property may be substantially less than would be the case if such commercial property were readily adaptable to other uses. Please see further paragraph 2.10 "*Morgan Stanley incurred and may continue to incur significant losses in the real estate sector*" above.

Lenders in respect of Commercial Mortgage Loans often appoint a "servicer" to be responsible for collecting payments on the underlying loans and pursuing delinquencies. Recently, a number of servicers of mortgage loans have experienced serious financial difficulties and, in some cases, have entered bankruptcy proceedings. Such financial difficulties may have a negative effect on the ability of servicers to pursue collection on mortgage loans that are experiencing increased delinquencies and defaults and to maximise recoveries on sale of underlying properties following foreclosure. If the servicers of the Commercial Mortgage Loans were to suffer financial difficulties, returns on such Commercial Mortgage Loans may be reduced while replacement servicers are found.

(c) Residential Mortgage Loans

The Collateral Assets may comprise residential mortgage loans (the **Residential Mortgage Loans**) that are secured by liens on or other security interests over the respective borrowers' freehold and/or leasehold or other similar interests in residential mortgaged properties (each, a **Residential Mortgaged Property**). The origination and servicing of Residential Mortgage Loans may be subject to various laws and regulations (including, in the United States, Federal and State laws and regulations) with respect to interest rates and other charges, or may require certain disclosures, required licensing of originators and regulated debt collection practices. Lenders in respect of Residential Mortgage Loans, often appoint a "servicer" to be responsible for collecting payments on the underlying loans and pursuing delinquencies, similar to lenders in respect of Commercial Mortgage Loans. Please see the final paragraph of sub-paragraph (b) "*Commercial Mortgage Loans*" above for a discussion of the risks relating to "servicers".

Credit risk arises from losses due to defaults by the borrowers in the underlying collateral and the servicer's failure to perform. Residential mortgage loans are obligations of the borrowers thereunder only and are not typically insured or guaranteed by any other person or entity. The rate of defaults and losses on residential mortgage loans will be affected by a number of factors, including general economic conditions and those in the area where the related mortgaged property is located, the borrower's equity in the mortgaged property and the financial circumstances of the borrower.

Certain Residential Mortgage Loans may be secured by second liens that are subordinate to the rights of the lenders under first mortgage loans. In such cases, the proceeds from any liquidation, insurance or condemnation proceedings generally will be available to satisfy the outstanding principal balance of such junior mortgage loans only to the extent that the claims of the related senior mortgage loans have been satisfied in full, including any foreclosure costs. In addition, a servicer for a junior loan may not be able to foreclose without the consent of the senior lender or may determine that it would be uneconomical to foreclose on the related mortgaged property. In such circumstances, the servicer may write-off the entire outstanding principal balance of the junior loan as bad debt. Please see further paragraph 2.10 "*Morgan Stanley has incurred and may continue to incur significant losses in the real estate sector*" above.

(d) Tagged Derivatives

In certain circumstances, following a default by a Seller under a Tagged Derivative, the Seller's counterparty, as the non-defaulting party, may seek to rely on its contractual ability to suspend performance, or otherwise to delay or avoid terminating and closing-out the relevant Tagged Derivative (eg if the Tagged Derivative is "in the money" in respect of the Seller). This may result in a delay in receipt of or a loss of potential Proceeds from such Tagged Derivative by the Seller and, therefore, the Issuer and Noteholders. Please see also paragraph 4.5 "*Certain Set-off Considerations*" above.

4.8 **Risks relating to the Declaration of Trust**

(a) Limitations on Enforcing Collateral Assets Against Obligors

The Trust Assets relating to a Series will not be assigned to the Issuer and legal title to the Collateral Assets will remain with the applicable Seller(s) under the Declaration of Trust for such Series. Accordingly, neither the Issuer nor the Trustee will be in privity of contract with the Obligors under the Collateral Assets and will not have the right to assert claims or effect remedies directly against the Obligors. In the event of defaults by Obligors under the Collateral Assets, the Issuer and the Trustee will have rights solely against the Sellers under the applicable Declaration of Trust and will have no rights against the Obligors under the Collateral Assets and only the applicable Seller(s) will be entitled to take any remedial actions or exercise any votes permitted to be taken or given thereunder.

(b) Risks Arising on an Insolvency of a Seller

The applicable Declaration of Trust creates in favour of the Issuer a beneficial interest in the Trust Assets. In the event a liquidator or administrator were to be appointed in respect of the business and property of a Seller acting as Seller where the method of transfer used is a Declaration of Trust, the Issuer believes that the trust (upon execution of the applicable Declaration of Trust) will be validly constituted and that the effect of the trust will be to remove the beneficial interest in the Trust Assets acquired by the Issuer under the applicable Declaration of Trust from the property of the applicable Seller available to a liquidator or administrator of such Seller for distribution to the general creditors of such Seller. There can be no assurance, however, that a court would reach the same conclusion.

It is possible that a liquidator or administrator appointed in relation to the business and property of a Seller may commence proceedings to challenge the validity and effectiveness of the trust for the purpose of including the beneficial interest in the Trust Assets acquired by the Issuer under the applicable Declaration of Trust in the property and estate of such Seller. If proceedings were commenced against the Issuer or in relation to the trust, delays in distributions on the Notes, possible reductions in the amount of payments of principal and interest on the Notes and limitations on the exercise of remedies under the Transaction Documents could occur. As described above, in the case of the insolvency of a Seller which may be subject to U.S. bankruptcy proceedings, the filing of a petition to begin a U.S. bankruptcy proceeding operates as an automatic stay of various actions against such Seller. See further 4.3 "*Insolvency Considerations Relating to Sellers, the Issuer and the Guarantor*" above.

(c) Commingling and Asset Identification Risk

The Asset Trust requires the assets the subject of such Asset Trust to be clearly ascertainable. The Collateral Assets Report will identify each Collateral Asset by reference to its internal code used by the relevant Seller to identify the exact Collateral Asset on its data systems. If the incorrect internal code is shown on the Collateral Assets Report or the internal code does not allow for the identification of a particular asset of the relevant Seller, the Asset Trust will not be effective over the intended Trust Asset and such asset would not form part of the portfolio available to the Issuer.

For the Asset Trust in respect of any Trust Assets to be effective, the Trust Assets must be clearly identified and, in respect of any interest, principal or other distribution or proceeds received by the relevant Seller in respect thereof, they must also be segregated upon receipt by the relevant Seller. However, if the relevant Seller does not do this and such interest, principal or other distribution or proceeds are not clearly identified as being the subject of the Asset Trust and segregated by the relevant Seller from its other assets there is a risk that, upon the insolvency of the relevant Seller, such interest, principal or other distribution or proceeds would form part of the general estate of the relevant Seller and the Issuer would have to claim as a general creditor of the relevant Seller for such amounts.

In addition, in respect of the Proceeds of Tagged Derivatives, if the relevant Seller does not comply with its undertaking to segregate and clearly identify the Proceeds upon receipt and deposit such Proceeds into the relevant Seller Derivatives Account upon the occurrence of a Trigger Event such Proceeds would form part of the general estate of the relevant Seller and the Issuer would have to claim as a general creditor of the relevant Seller for such amounts. The Noteholders are therefore reliant on the receipt of the Proceeds by the relevant Seller, the clear identification within the internal records of the relevant Seller of such Proceeds upon receipt and the deposit of such Proceeds by the relevant Seller into the relevant Seller Derivatives Account.

Noteholders should note that upon an administration or liquidation of the relevant Seller the Issuer would be reliant on the administrator or liquidator of the relevant Seller complying with its undertaking to segregate and clearly identify such interest, principal or other distribution or proceeds in respect of the Trust Assets upon receipt. However, if the administrator or liquidator does not do so, and instead such interest, principal or other distribution or proceeds are paid into the relevant Seller bankrupt estate, the trust over such interest, principal or other distribution or proceeds may be ineffective due to lack of ability to identify such interest, principal or other distribution or proceeds.

(d) Restrictions on Transfers of Loan Agreements

There are provisions in some loan agreements which limit or restrict the transfer or assignment of the Collateral Assets and the related loan agreement. The applicable Declaration of Trust has been structured with the intention that such limitations or restrictions are not contravened by the creation of the trust which will remain in force. Such limitations or restrictions on transfer and the provisions of the applicable Declaration of Trust will not permit the appointment of a substitute trustee or transfer of legal title to the Collateral Assets Company or any other person even in the event of a default by the Seller in the performance of its obligations thereunder.

(e) Proceeds of Tagged Derivatives

Noteholders should note that the Issuer will have no proprietary or beneficial interest in the Seller's rights against counterparties under the Tagged Derivatives, but only to the Proceeds as they are received by the Seller. Noteholders should note that until the Proceeds of such Tagged Derivatives are received, such Proceeds will not become subject to the Asset Trust. The Asset Trust in respect of the Proceeds of Tagged Derivatives requires such Proceeds to be clearly ascertainable as to which see further "*Commingling and Asset Identification Risk*" above. The Trustee and ultimately the Noteholders are therefore reliant on both the receipt of the Proceeds by the Seller, the clear identification within the internal records of the relevant Seller of such Proceeds upon receipt and the deposit of such Proceeds into the relevant Seller Derivatives Account.

In respect of a U.S. incorporated Seller only, such Seller will, in addition to the declaration of trust over the Proceeds in respect of the Tagged Derivative, also grant a security interest to the Issuer over all of its Rights in respect of such Tagged Derivative (or the relevant portion thereof). However, prospective investors should note that enforcement of such security over such rights in respect of the Proceeds in respect of such Tagged Derivatives will be subject to a U.S. insolvency law stay upon an insolvency of the Seller. See further paragraph 4.3 "*Insolvency considerations relating to Sellers, the Issuer and the Guarantor*" above.

During the term of a Series of Notes, the Sellers will monitor the value of the Tagged Derivatives on each Business Day. The value assigned to each such Tagged Derivative will be the value as marked on the books of the applicable Sellers. While the value given to Tagged Derivatives should reflect the amount of Proceeds that would be paid by the relevant derivative counterparty to the Seller, there can be no assurance that the Proceeds received by the Seller from the Tagged Derivatives will be equal to such value.

Noteholders should note that the proceeds of enforcement of the security over the Collateral Assets may be significantly less than the value of the Tagged Derivatives from which the relevant trust property derives. The Issuer and the Trustee will be reliant on a counterparty exercising its right to terminate the relevant Tagged Derivative in the case of a default by the Seller and, in the case of a Tagged Derivative which is out-of-the money for the counterparty, the counterparty may not be incentivised to exercise such right and may delay terminating such Tagged Derivative. As described above, the Issuer and the Trustee may not be able to deal directly with counterparties and may not be entitled to enforce the payment of the close-out amount once such Tagged Derivatives have been terminated or otherwise deal with the counterparties in order to collect amounts owed by counterparties. Accordingly, the enforcement of the security and the Noteholders' recourse in respect thereof will be limited to the amounts actually paid by the counterparties to the applicable Seller under the Tagged Derivatives. Please see further paragraph 2.12 "*Morgan Stanley is exposed to the risk that third parties that are indebted to it will not perform their obligations*" above.

(f) Competing proprietary claims

In certain jurisdictions where some Obligors may be incorporated, third party creditors of the relevant Seller may in certain circumstances obtain rights in rem in respect of amounts due under the Collateral Assets. Such rights may have priority over the rights of the Issuer to receive such amounts and may therefore be prejudicial to the Issuers' rights and interest in such Collateral Assets. This risk is heightened in respect of Collateral Assets the interests of which are acquired by way of Declaration of Trust where the Obligors are located in jurisdictions in which the Issuer's beneficial interest is not recognised due to the laws of such jurisdiction not recognising the concept of a trust or not recognising trusts validly created under English law.

4.9 Risks relating to Participations

(a) Participations in loans with U.S. Obligors

The Issuer will acquire its interests in the loans from U.S. Obligors (the **U.S. Loans**) indirectly pursuant to the applicable Master Participation Agreement. A valid and enforceable participation interest results in the Issuer having a proprietary interest in the sums received by the Seller from the Obligor. Such amounts would remain ringfenced from the Seller's insolvent estate in the event of an insolvency of the Seller. If, however, the Master Participation Agreement was held not to be a legally valid and enforceable participation interest, it would result in a contractual relationship only and, in the event of the insolvency of the Seller, the Issuer may be treated as a general, unsecured creditor of the Seller in respect of a Participation and would not benefit from any set-off between the Seller and the Obligor and would have no recourse to Obligors or to the collateral supporting the loan obligation. In such circumstances, the Issuer would assume the additional credit risk of the Seller. However, in order to mitigate this risk, in the event that the Participation was deemed not to grant such a proprietary interest to the Issuer, the relevant Collateral Transfer Agreement will operate to grant a security interest over the relevant U.S. Loans by the relevant Seller to the Issuer, which would result in the Issuer being a secured creditor of the relevant Seller. A UCC filing will be made in respect of such security interest. This will potentially mitigate the results of a recharacterisation as referenced in paragraph 4.6 "*Recharacterisation risk as a secured loan*" above. However, this would not mitigate the risk of a stay on the enforcement of such loans: see paragraph 4.3 "*Insolvency Considerations relating to Sellers, the Issuer and the Gurantor*".

Further, the Sellers remain the entities with direct rights and remedies under the U.S. Loans' financing and security documents against the Obligors and any collateral or guaranties pledged or supporting the U.S. Loans. In certain limited circumstances, if the terms of a U.S. Loan permit, the Issuer may have the right to require the Seller to transfer legal title to a U.S. Loan to it so that the Issuer may pursue claims directly against the Obligor in its own name. In all other cases, the Issuer will otherwise be reliant on enforcement by the Seller.

(b) English law sub-participations between MSBIL and MSSF

Those Collateral Assets which are English law sub-participations of European corporate loans between MSBIL as grantor of the sub-participation and MSSF as grantee of the sub-participation, where MSSF will be the Seller under the Series, will only provide the Issuer with a contractual relationship with MSSF as the Seller. Unlike participations in respect of U.S. loans, a European style sub-participation does not pass any proprietary interest in the relevant loans to the participant. The Issuer will have no recourse to the Obligor. As in the Participations described in the paragraphs above, the Issuer would have the right to receive payments of principal, interest and any fees to which it is entitled under an English law sub-participation only from the Seller and only upon receipt by the Seller of such payments from the Obligor. Investors should note that an investment in Notes which have English law sub-participations of European corporate loans as Collateral Assets will be exposed to the credit risk of MSBIL as grantor of the sub-participation, MSSF as grantee of the sub-participation and the credit risk of the Issuer and the Obligor. As the Issuer will have no right to enforce against the Obligor provisions of the underlying loan that has been sub-participated, the Noteholders will have no recourse to the Obligors and no recourse to collateral supporting the loan.

This risk is mitigated in part by MSBIL granting to MSSF a security interest over the relevant loans (which MSBIL will do unless otherwise agreed with an investor in respect of a particular Series), with MSSF as Seller assigning the benefit of such security interest to the Issuer pursuant to the Collateral Transfer Agreement. However, Noteholders should be aware that any such security interest will secure MSBIL's obligations under the sub-participations and not the Issuer's obligations under the Notes. As a result, it will only act as a mitigant to the above risk in a situation where the Issuer is in default under the Notes and, at the same time, MSBIL is in default under a sub-participation. For so long as MSBIL is performing its payment obligations and is otherwise not in default under the sub-participation, such security interest will not be enforceable against MSBIL and, in such circumstances, the security interest will not in itself benefit the Noteholders upon the occurrence of an event of default under the Notes.

Where MSSF holds European corporate loans and transfers the beneficial interest therein to the Issuer pursuant to a Declaration of Trust, the risks relating to the Declaration of Trust will apply. See further paragraph 4.8 "*Risks relating to the Declaration of Trust*" above.

TERMS AND CONDITIONS OF THE NOTES

Each Series of Notes shall have the terms and conditions as set out in the Conditions Modules incorporated by reference and as completed, modified or supplemented by the provisions set out in the Final Terms.

As so completed, modified or supplemented, such terms and conditions will be the "**Conditions**" for the purposes of such Notes.

The Conditions for each Series of Notes will be incorporated by reference into each Global Note and each definitive Note, in the latter case only if permitted by the relevant stock exchange or other relevant authority (if any) and agreed by the Issuer and the relevant Dealer at the time of issue but, if not so permitted and agreed, such definitive Note will have endorsed thereon or attached thereto such Conditions. The applicable Final Terms in relation to any Tranche of Notes may specify other terms and conditions which shall, to the extent so specified or to the extent inconsistent with the terms and conditions in the Conditions Modules, replace or modify the terms and conditions in the Conditions Modules for the purpose of such Notes. The applicable Final Terms (or the relevant provisions thereof) will be endorsed upon, or attached to, each Global Note and definitive Note. Reference should be made to "*Form of Final Terms*" for a description of the content of Final Terms which will specify which of such terms are to apply in relation to the relevant Notes.

References to the **applicable Final Terms** are to the Final Terms (or the relevant provisions thereof) attached to or endorsed on the relevant Note.

BASE CONDITIONS MODULE

MARCH 2012 EDITION

**to be incorporated by reference into
the Conditions and the Trust Instrument for
an issue of Notes under the U.S.\$5,000,000,000 Collateralised Funding Programme
arranged by
MORGAN STANLEY & CO. INTERNATIONAL PLC**

BASE CONDITIONS MODULE

MARCH 2012 EDITION

This Base Conditions Module sets out the basic terms and conditions for Notes governed by English law and will apply in respect of all Series of Notes. Other Conditions Modules will apply in addition, as specified in the Final Terms.

1. DEFINITIONS AND INTERPRETATION

In this Base Conditions Module:

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

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

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

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

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

"Additional Charging Document" means, in relation to a Series of Notes, any security document, other than the Trust Instrument, entered into by the Issuer for the purposes of granting security over or in respect of any part of the Mortgaged Property for such Series.

"Affiliate" means, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity directly or indirectly under common control with the person. For this purpose, **"control"** of any entity or person means ownership of a majority of the voting power of the entity or person.

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

"Agency Terms Module" means the Agency Terms Module (March 2012 Edition) containing the standard agency and custodian provisions for an issue of Notes or such other edition as specified in the Issue Terms.

"Agents" means, in relation to a Series of Notes, each or any of the following:

- (i) the Account Bank;
- (ii) the Calculation Agent;

- (iii) the Collateral Agent;
- (iv) the Registrar and Transfer Agents;
- (v) the Paying Agent and including, for the avoidance of doubt, the Principal Paying Agent; and
- (vi) and any other agent appointed pursuant to the Agency Agreement.

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

"**Arranger**" means Morgan Stanley & Co. International plc.

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

"**Base Currency**" means the currency of denomination of the relevant Series.

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

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

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

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

- (b) **"Following Business Day Convention"** means that, if any date subject to such convention would otherwise fall on a day which is not a Business Day, such date subject to such convention shall be postponed to the next day which is a Business Day; or
- (c) **"Modified Following Business Day Convention"** means that, if any date subject to such convention would otherwise fall on a day which is not a Business Day, such date subject to such convention shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event such date subject to such convention shall be brought forward to the immediately preceding Business Day; or
- (d) **"Preceding Business Day Convention"** means that, if any date subject to such convention would otherwise fall on a day which is not a Business Day, such date subject to such convention shall be brought forward to the immediately preceding Business Day.

"Calculation Agent" means Morgan Stanley & Co. International plc of 25 Cabot Square, Canary Wharf, London E14 4QA.

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

"Clearing Account" means each segregated account in the name of the Issuer opened with the Account Bank with the account number as specified in the Final Terms in respect of the first Series of Notes or the Final Terms in respect of any subsequent Series of Notes in the event that a clearing account is opened in the currency of such subsequent Series (or, in the event that the Account Bank requires to change such account numbers, each account with the account number specified by the Account Bank in accordance with the Agency Terms Module) and which shall be a clearing account in respect of all Series of Notes into which certain amounts in respect of any Series of Notes denominated in the same currency as such Clearing Account may be deposited prior to being transferred into the relevant Series Account. A separate Clearing Account will be opened in respect of each currency in which a Series of Notes is denominated.

"Clearing Account Ledger" means each ledger on each Clearing Account maintained by the Issuer which constitutes a record of all amounts credited to and debited from such Clearing Account (including for the avoidance of doubt all interest accrued thereon) and the amount standing to the credit of such Clearing Account which is, in each case, attributable to a particular Series of Notes (including a *pro rata* amount of any interest accrued on such Clearing Account).

"Clearing Account Amount" means, on any day of determination and in respect of a Series of Notes, an amount equal to the lesser of (i) the aggregate of all amounts due and unpaid to the Secured Parties in respect of such Series and (ii) the amount specified in the Clearing Account Ledger as being the amount in the Clearing Accounts attributable to such Series.

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

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

"**Code**" means the US Internal Revenue Code of 1986.

"**Collateral Agent**" means The Bank of New York Mellon of One Wall Street – 4th Floor, New York, NY 10286.

"**Collateral Assets**" has the meaning given to it in of the Collateral Transfer Agreement.

"**Collateral Assets Report**" means a report substantially in the form set out in the Annex to the Collateral Transfer Agreement.

"**Collateral Transfer Agreement**" means, in relation to a Series of Notes, each collateral asset transfer agreement, as constituted by the Trust Instrument, entered into between the Issuer, the relevant Seller(s) and the Collateral Agent specifying the terms by which the Collateral Assets relating to such Notes shall be transferred between them.

"**Common Depository**" means a common depository on behalf of Euroclear and Clearstream, Luxembourg.

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

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

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

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

"**Declaration of Trust**" means, in relation to a Series of Notes, the declaration of trust constituted by the Trust Instrument, entered into between the Issuer and the relevant Seller(s) specifying the terms by which the Trust Assets relating to such Notes shall be transferred between them.

"**Defaulting Party**" has the meaning given thereto in the Collateral Transfer Agreement.

"**Default Notice**" has the meaning given thereto in the Collateral Transfer Agreement.

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

"Definitive Note" means a definitive Note substantially in the form of Part 2 of the First Schedule to the Trust Terms Module to be issued only in the limited circumstances set out in the Conditions and bearing a legend substantially in the form of the legend appearing on the Global Note in exchange for which such Definitive Note is issued.

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

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

"Early Redemption Amount" means, in relation to a Series of Notes, the Outstanding Principal Amount of such Notes.

"Eligibility Criteria" means, in respect of a Collateral Asset, the following criteria which must be satisfied at all times:

- (a) it is:
 - (i) a European corporate loan being a secured or unsecured, senior or subordinated, syndicated or unsyndicated loan granted to a European corporate or similar entity;
 - (ii) a U.S. corporate loan being a secured or unsecured, senior or subordinated, syndicated or unsyndicated loan granted to a U.S. corporate or similar entity;
 - (iii) a U.S. residential and/or commercial mortgage whole loan (including funded home equity lines of credit) secured by liens on or other security interests over the respective Obligor's freehold and/or leasehold or other similar interests in residential mortgaged properties and/or in commercial and multifamily mortgaged properties;
 - (iv) a European residential and/or commercial mortgage whole loan secured by liens on or other security interests over the respective Obligor's freehold and/or leasehold or other similar interests in residential mortgaged properties and/or in commercial and multifamily mortgaged properties;
 - (v) the Proceeds of a Tagged Derivative and the rights of a Seller to the relevant Seller Derivatives Account;
 - (vi) an English law sub-participation of a European corporate loan between Morgan Stanley Bank International Limited (**MSBIL**) and Morgan Stanley Senior Funding Inc (**MSSF**) as the relevant Seller, the relevant European corporate loan being a secured or unsecured, senior or subordinated, syndicated or unsyndicated loan granted to a European corporate or similar entity; or

- (vii) cash standing to the credit of the relevant Series Account and/or amounts attributable to the applicable Series standing to the credit of the Clearing Accounts as shown in the applicable Clearing Account Ledger;
- (b) (i) it is capable of being assigned or participated to the Issuer and is capable of being reassigned by the Issuer or (ii) the beneficial interest of such Collateral Asset is capable of being acquired by the Issuer pursuant to a Declaration of Trust and of being relinquished by the Issuer, in each case without a breach of any applicable law or regulation, selling restriction or contractual provision and the Issuer does not require any authorisations, consents approvals or filings (other than such as have been obtained or effected) as a result of or in connection with any such assignment, reassignment, participation, acquisition or relinquishment under any applicable law;
- (c) upon assignment or participation thereof or the acquisition of the beneficial interest therein by the Issuer, the Collateral Asset is capable of being, and will be, the subject of a first fixed charge or a first ranking assignment by way of security in favour of the Trustee for the benefit of the Secured Parties pursuant to the Trust Instrument (or any deed or document supplemental hereto) or any Additional Charging Document; and
- (d) it must satisfy any other criteria which qualify criteria (a)(i) to (vii) above as specified in the applicable Final Terms in respect of the relevant Series.

"Eligible Purchaser" means an investor who is (i) a non-U.S. Person (as defined in Regulation S), (ii) a "qualified institutional buyer" (as defined in Rule 144A) (QIBs) and (iii) a "qualified purchaser" as defined in Section 2(a)(51)(A) of the 1940 Act and the rules and regulations thereunder.

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

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

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

"Event of Default" means, in relation to the Notes of any Series, any of the conditions, events or acts provided in Condition 12 (*Events of Default*) to be events upon the occurrence of which the Notes of such Series would, subject only to notice by the Trustee as therein provided, become immediately due and repayable.

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

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

"FATCA" means Sections 1471 through 1474 of the Code and any regulations or agreements thereunder or official interpretations thereof.

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

"Fitch" means Fitch, Inc., Fitch Ratings, Ltd. and their subsidiaries including Derivative Fitch, Inc. and Derivative Fitch Ltd. and any successor or successors thereto.

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

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

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

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

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

- (a) if "Actual/365" or "Actual/Actual" is specified in the Issue Terms, the actual number of days in the Interest Period divided by 365 (or, if any portion of that Interest Period

falls in a leap year, the sum of (i) the actual number of days in that portion of the Interest Period falling in a leap year divided by 366 and (ii) the actual number of days in that portion of the Interest Period falling in a non-leap year divided by 365);

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

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

where:

"Y₁" is the year, expressed as a number, in which the first day of the Interest Period falls;

"Y₂" is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"M₁" is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

"M₂" is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"D₁" is the first calendar day, expressed as a number, of the Interest Period, unless such number is 31, in which case D₁ will be 30; and

"D₂" is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless such number would be 31 and D₁ is greater than 29, in which case D₂ will be 30;

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

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

where:

"Y₁" is the year, expressed as a number, in which the first day of the Interest Period falls;

"Y₂" is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"M₁" is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

"M₂" is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"D₁" is the first calendar day, expressed as a number, of the Interest Period, unless such number would be 31, in which case D₁ will be 30; and

"D₂" is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless such number would be 31, in which case D₂ will be 30;

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

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

where:

"Y₁" is the year, expressed as a number, in which the first day of the Interest Period falls;

"Y₂" is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"M₁" is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

"M₂" is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"D₁" is the first calendar day, expressed as a number, of the Interest Period, unless (i) that day is the last day of February or (ii) such number would be 31, in which case D₁ will be 30; and

"D₂" is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless (i) that day is the last day of February but not the Maturity Date or (ii) such number would be 31, in which case D₂ will be 30.

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

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

"FSA" means the Financial Services Authority.

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

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

"**Global Note**" means a Global Note in the applicable form or substantially in the applicable form set out in Part 1 of the First Schedule to the Trust Terms Module (with such modifications (if any) as may be agreed between the Issuer and the Trustee) and sold only to Eligible Purchasers.

"**Guarantee**" means the guarantee in respect of each Series executed by the Guarantor in respect of the payment obligations of the Issuer under the Notes of such Series.

"**Guaranteed Amounts**" means, in relation to a Series of Notes, all amounts payable by the relevant Issuer under the Notes of such Series.

"**Guarantor**" means Morgan Stanley.

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

"**Interest Amount**" has the meaning set out in Condition 8(b)(iv) (*Types of Notes - Floating Rate Notes*).

"**Interest Commencement Date**" means, in relation to a Series of Notes, the date set out in the Issue Terms.

"**Interest Determination Date**" means, in relation to a Series of Notes, the date(s) set out in the Issue Terms where Screen Rate Determination is specified as applicable and which shall be a date no less than 3 Business days prior to the relevant Interest Payment Date.

"**Interest Payment Date**" has the meaning given thereto in Condition 8(b)(i) (*Interest Payment Dates*).

"**Interest Period**" has the meaning set out in Condition 8(b)(i) (*Types of Notes – Floating Rate Notes*).

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

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

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

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

"**ISDA Master Agreement**" means a 1992 ISDA Master Agreement (Multicurrency – Cross Border) or a 2002 ISDA Master Agreement, as applicable, each as published by ISDA.

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

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

"Liability" means any loss, damage, cost, charge, claim, demand, expense, judgment, action, proceeding or other liability whatsoever (including, without limitation, in respect of taxes, duties, levies, imposts and other charges) and including any value added tax or similar tax charged or chargeable in respect thereof and legal fees and expenses and including the costs in relation to the Trustee's management time incurred pursuant to clause 16 (*Remuneration and Indemnification of the Trustee*) of the Trust Deed on a full indemnity basis.

"LIBOR" means London inter-bank offered rate.

"Master Collateral Verification Agreement" means the master collateral verification agreement between the Collateral Agent, the Sellers and the Issuer dated on or about the Issue Date.

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

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

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

"Moody's" means Moody's Investor Services, Inc.

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

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

- (i) having such maturity as may be specified in the Issue Terms and, in any case, such minimum or maximum maturity as may be allowed or required from time to time by the relevant central bank (or equivalent body) or any laws or regulations applicable to the relevant Currency of Issue; and
- (ii) having such minimum denomination as may be allowed or required from time to time by the relevant central bank (or equivalent body) or any laws or regulations applicable to the relevant Currency of Issue;

and reference to **"Notes"** shall be deemed to include Further Fungible Notes unless the context otherwise requires.

"Noteholder Report" means the report prepared by the Collateral Agent on each Business Day.

"Noteholders" means the persons in whose name the Notes are registered save that, in respect of the Notes of any Series, for so long as such Notes or any part thereof are represented by a Global Note deposited with a depository for Euroclear and/or Clearstream, Luxembourg, each person who is for the time being shown in the records of Euroclear and/or Clearstream, Luxembourg as the holder of a particular nominal amount of the Notes of such Issue shall be deemed to be the holder of such nominal amount of the Notes (and the holder of the relevant Global Note shall be deemed not to be the holder) for all purposes of the Trust Deed other than with respect to the payment of principal, premium (if any) or interest (if any) on such Notes, the right to which shall be vested, as against the relevant Issuer and the relevant Trustee solely in such depository and the expressions **"Noteholder"**, **"holder of Notes"** and related expressions shall be construed accordingly.

"Noteholders Option Period" means, in relation to a Series of Notes, the period specified in the applicable Issue Terms.

"Obligor" means the obligor of a Collateral Asset or the counterparty in respect of a Tagged Derivative (as applicable).

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

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

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

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

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

- (a) those Notes to the extent that they shall have been redeemed in part pursuant to the relevant Issue Terms;
- (b) those Notes which have been redeemed in full pursuant to the relevant Issue Terms;
- (c) those Notes in respect of which the date for redemption in accordance with the relevant Issue Terms has occurred and the redemption moneys (including all premium (if any) and interest (if any) payable thereon) have been duly paid to the Trustee and the Principal Paying Agent in the manner provided in the Agency Agreement (and where appropriate notice to that effect has been given to the Noteholders in accordance with Condition 16 (*Notices*)) and remain available for payment against presentation of the Notes;
- (d) those Notes which have been purchased and cancelled in accordance with 9(d) (*Purchases*);

- (e) those Notes in respect of which claims have become void under Condition 14 (*Prescription*);
- (f) those mutilated or defaced Notes which have been surrendered and cancelled and in respect of which replacements have been issued pursuant to Condition 15 (*Replacement of Notes*);
- (g) (for the purpose only of ascertaining the nominal amount of the Notes of that Series outstanding and without prejudice to the status for any other purpose of the Notes) those Notes which are alleged to have been lost, stolen or destroyed and in respect of which replacements have been issued pursuant to Condition 15 (*Replacement of Notes*); and
- (h) any Global Note to the extent that it shall have been exchanged for definitive Notes in each case pursuant to its provisions; and

PROVIDED THAT for each of the following purposes, namely:

- (i) the right to attend and vote at any meeting of the Noteholders or any of them;
- (ii) the determination of how many and which Notes are for the time being outstanding for the purposes of Conditions 12 (*Events of Default*) and 13 (*Enforcement*) and paragraphs 2, 5, 6 and 9 of the Second Schedule to the Trust Terms Module;
- (iii) any discretion, power or authority (whether contained in the Trust Instrument or vested by operation of law) which the Trustee is required, expressly or impliedly, to exercise in or by reference to the interests of the Noteholders or any of them; and
- (iv) the determination by the Trustee whether any event, circumstance, matter or thing is, in its opinion, materially prejudicial to the interests of the Noteholders or any of them,

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

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

"**Ownership Certificate**" has the meaning given to it in Condition 2(h) (*Form, Denomination and Title*).

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

"**Paying Agent**" means each of the Principal Paying Agent and any other paying agent appointed pursuant to the Agency Agreement.

"**Payment Day**" means any day which (subject to Condition 14 (*Prescription*)) is:

- (i) a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in:

- (A) the relevant place of presentation;
 - (B) any Additional Financial Centre specified in the Issue Terms; and
- (ii) either (1) in relation to any sum payable in a Currency of Issue other than euro, a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in the principal financial centre of the country of the relevant Currency of Issue and any Additional Financial Centre as specified in the applicable Final Terms) or (2) in relation to any sum payable in euro, a day on which the Target2 System is open.

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

"Placing Terms Module" means the Placing Terms Module (April 2010 Edition) containing the provisions relating to the purchase and/or placing of Notes or such other edition as specified in the Issue Terms.

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

"Priority of Payments" has the meaning given to it in Condition 7 (*Application of Proceeds*).

"Principal Paying Agent" means The Bank of New York Mellon, London Branch.

"Programme" means the U.S.\$5,000,000,000 Collateralised Funding Programme of the Issuer.

"Put Notices" has the meaning given to it in Condition 9(c)(ii) (*Redemption - Redemption at the option of the Noteholders*).

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

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

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

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

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

"Registrar" means The Bank of New York Mellon (Luxembourg) S.A..

"Regulation S" means the Regulation S under the Securities Act.

"Related Security" means all of the relevant Seller's right, title and benefit in and to any security in relation to a Collateral Asset including any mortgage or standard security, guarantee, cash reserve, assignment or assignation or other collateral, intercreditor agreement or deed of priority and any policies of insurance held by or in favour of such Seller in respect of such Collateral Asset or any of its Related Security.

"Relevant Date" has the meaning set out in Condition 14 (*Prescription*).

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

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

"repay", **"redeem"** and **"pay"** shall each include both the others and cognate expressions shall be construed accordingly.

"Repurchase Date" has the meaning given thereto in the Collateral Transfer Agreement.

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

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

"Rule 144A" means Rule 144A under the Securities Act.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor or successors thereto.

"Secured Party" means the Noteholders, each Seller, the Guarantor, the Trustee, any Receiver or other Appointee and the Agents (other than the Collateral Agent).

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

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

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

"**Seller Derivatives Account**" has the meaning given thereto in the Collateral Transfer Agreement.

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

"**Series Account**" means, in relation to a Series of Notes, a segregated bank account opened with the Account Bank as required and held by the Issuer and into which amounts corresponding to such Series will be deposited in accordance with the Conditions of the Notes and the terms of the Transfer Agreements.

"**Specified Denomination**" means, in relation to a Series of Notes, U.S.\$250,000 and integral multiples of U.S.\$1,000 in excess thereof, or as otherwise specified in the applicable Final Terms.

"**Specified Interest Payment Date**" means the date(s) specified as such in the Issue Terms.

"**Specified Office**" means in relation to any of the Agents, either the office identified with its name at the end of the Conditions, or any other office approved in writing by the Trustee in relation to a Series of Note.

"**Specified Period**" means, in relation to a Series of Notes, the period specified as such in the Issue Terms.

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

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

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

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

"**Subsidiary**" means any company which is for the time being a subsidiary (within the meaning of Section 1159 of the Companies Act 2006 of Great Britain).

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

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

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

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

"Transaction Documents" means, in relation to a Series of Notes, the Trust Instrument, the Agency Agreement, the Transfer Agreement(s), the Placing Agreement, any Additional Agreements and any Additional Charging Document, in each case entered into in relation to such Notes and all agreements incidental to the issue of such Notes.

"Transfer Agreement" means, in relation to a Series of Notes, any one or more of the Collateral Transfer Agreement, any Declaration of Trust and any Master Participation Agreement entered into in connection with such Series and any other agreements specified in the applicable Issue Terms.

"Trust Assets" has the meaning given thereto in the Declaration of Trust.

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

"Trust Deed" means the trust deed dated the Issue Date incorporating the Trust Terms Module as constituted pursuant to the Trust Instrument.

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

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

"Trust Terms Module" means the Trust Terms Module (March 2012 Edition) containing the trust terms constituting and/or securing the Notes or such other edition as specified in the Issue Terms.

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

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

2. FORM, DENOMINATION AND TITLE

- (a) The Notes are in registered form. Notes are serially numbered and will be issued in denominations of U.S.\$250,000, or its equivalent in another currency, and integral multiples of U.S.\$1,000 in excess thereof.

Title to Notes will pass upon registration of transfers in accordance with these Terms and Conditions and the provisions of the Trust Deed and the Agency Agreement. Subject as set out below, the registered holder of any Note will (except as otherwise required by law or ordered by a court of competent jurisdiction or an official authority) be treated as the absolute

owner thereof (whether or not overdue and notwithstanding any notice of ownership or writing thereon or notice of any previous loss or theft thereof) for all purposes.

Notes of one Specified Denomination may not be exchanged for Notes of another Specified Denomination.

- (b) A note certificate (each a **Certificate**) will be issued to each Noteholder in respect of its registered holding of Notes. Each Certificate will be numbered serially with an identifying number which will be recorded on the relevant Certificate and in the register of Noteholders which the Issuer will procure to be kept by the Registrar and at the registered office of the Issuer.
- (c) A Note may be transferred by depositing the Certificate issued in respect of that Note, with the form of transfer on the back duly completed and signed, at the specified office of the Registrar or any of the Agents.
- (d) Each new Certificate to be issued upon transfer of Notes will, within five business days of receipt by the Registrar or the relevant Agent of the duly completed form of transfer endorsed on the relevant Certificate, be mailed by uninsured mail at the risk of the holder entitled to the Note to the address specified in the form of transfer. For the purposes of this Condition, **business day** shall mean a day on which banks are open for business in the city in which the specified office of the Transfer Agent with whom a Certificate is deposited in connection with a transfer is located.

Where some but not all of the Notes in respect of which a Certificate is issued are to be transferred a new Certificate in respect of the Notes not so transferred will, within five business days of receipt by the Registrar or the Transfer Agent of the original Certificate, be mailed by uninsured mail at the risk of the holder of the Notes not so transferred to the address of such holder appearing on the register of Noteholders or as specified in the form of transfer.

Registration of transfer of Notes will be effected without charge by or on behalf of the Issuer or the Transfer Agent but upon payment (or the giving of such indemnity as the Issuer or the Transfer Agent may reasonably require) in respect of any tax or other governmental charges which may be imposed in relation to such transfer.

- (e) No Noteholder may require the transfer of a Note to be registered during the period of 15 days ending on the due date for any payment of principal, premium or interest on that Note.

The Issuer shall not be required in the event of a partial redemption of Notes under Condition 9 (*Redemption and Compulsory Sale*):

- (i) to register the transfer of Notes (or parts of Notes) during the period beginning on the 65th day before the date of the partial redemption and ending on the day on which notice is given specifying the serial numbers of Notes called (in whole or in part) for redemption (both inclusive); or
 - (ii) to register the transfer of any Note, or part of a Note, called for redemption.
- (f) All transfers of Notes and entries on the register of Noteholders will be made subject to the detailed regulations concerning transfer of Notes in Schedule 2 (*Register and Transfer of Notes*) to the Trust Deed. The regulations may be changed by the Issuer with the prior written

approval of the Registrar and the Trustee. A copy of the current regulations will be mailed (free of charge) by the Registrar to any Noteholder who requests one.

- (g) The Notes of each Tranche offered and sold in reliance on Regulation S, which will be sold to non-U.S. persons outside the United States, will initially be represented by a global note in registered form (a **Global Note**). Prior to expiry of the distribution compliance period (as defined in Regulation S) applicable to the Notes (or any Tranche thereof), beneficial interests in a Global Note may not be offered or sold to, or for the account or benefit of, a U.S. person save as otherwise provided in this Condition and may not be held otherwise than through Euroclear or Clearstream, Luxembourg and such Global Note will bear a legend regarding such restrictions on transfer.

Global Notes will be deposited with a common depository for Euroclear and Clearstream, Luxembourg, and registered in the name of a common nominee of, Euroclear and Clearstream, Luxembourg, as specified in the applicable Final Terms. Persons holding beneficial interests in Global Notes will be entitled or required, as the case may be, under the circumstances described below, to receive physical delivery of definitive Notes in fully registered form.

Payments of principal, interest and any other amount in respect of the Global Notes will, in the absence of provision to the contrary, be made to the person shown on the Register as the registered holder of the Global Notes. None of the Issuer, the Guarantor, any Paying Agent, the Trustee or the Registrar will have any responsibility or liability for any aspect of the records relating to or payments or deliveries made on account of beneficial ownership interests in the Global Notes or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Payments of principal, interest or any other amount in respect of the Notes in definitive form will, in the absence of provision to the contrary, be made to the persons shown on the Register on the relevant Record Date immediately preceding the due date for payment in the manner provided in that Condition.

Interests in a Global Note will be exchangeable (free of charge), in whole but not in part, for definitive Notes without receipts, interest coupons or talons attached only upon the occurrence of an Exchange Event. The Issuer will promptly give notice to Noteholders in accordance with Condition 16 (*Notices*) if an Exchange Event occurs. In the event of the occurrence of an Exchange Event, Euroclear and/or Clearstream, Luxembourg or any person acting on their behalf (acting on the instructions of any holder of an interest in such Global Note) or the Trustee may give notice to the Registrar requesting exchange and, in the event of the occurrence of an Exchange Event as described in (iii) above, the Issuer may also give notice to the Registrar requesting exchange. Any such exchange shall occur not later than 10 days after the date of receipt of the first relevant notice by the Registrar.

- (h) Interests in a Global Note may, subject to compliance with all applicable restrictions, be transferred to a person who wishes to hold such interest in another Global Note. No beneficial owner of an interest in a Global Note will be able to transfer such interest, except in accordance with the applicable procedures of, Euroclear and Clearstream, Luxembourg, in each case to the extent applicable.
- (i) Notes may be offered, sold or transferred only to Eligible Purchasers.

- (j) A beneficial owner of an interest in a Note will not be able to exchange or transfer that interest, except in accordance with the applicable procedures of the Clearing Systems. In addition, Global Notes and, if applicable, any Definitive Notes will be subject to certain restrictions on transfer set out in a legend or legends thereon.
- (k) For so long as any of the Notes is represented by a Global Note held by a Common Depositary, each person who is for the time being shown in the records of the Clearing Systems as entitled to a particular nominal amount of Notes shall be deemed to be the holder of such nominal amount of Notes for all purposes other than with respect to the payment of principal, premium (if any) or interest on such Notes. With respect to such payment, such Common Depositary or its nominee shall be deemed to be the holder of such nominal amount of Notes in accordance with and subject to the terms of the relevant Note. Any certificate or other document issued by the Clearing Systems as to the nominal amount of Notes standing to the account of any person shall be conclusive and binding for all purposes save in the case of manifest error. In determining whether a particular person is entitled to a particular nominal amount of Notes as aforesaid, the Trustee may rely on such evidence and/or information and/or certification as it shall, in its absolute discretion, think fit and, if it does so rely, such evidence and/or information and/or certification shall, in the absence of manifest error, be conclusive and binding on all concerned.
- (l) Subject to paragraph (k) above, the Issuer, the Guarantor, the Trustee and the Agents may deem and treat the holder of any Note as the absolute owner(s) thereof for all purposes. Except as ordered by a court of competent jurisdiction or as required by applicable law, the Issuer, the Guarantor, the Trustee and the Agents shall not be affected by any notice to the contrary, whether or not the Note shall be overdue and notwithstanding any notation of ownership or other writing thereon. All payments made to any such holder shall be valid and, to the extent of the sums so paid, effective to satisfy and discharge the liability for the moneys payable upon such Notes.

3. STATUS

(a) Status of the Notes

The Notes are senior, secured obligations of the Issuer, secured in the manner described in Condition 4 (*Security*). The Notes rank and will rank, unless otherwise specified in the Final Terms, *pari passu* without any preference among themselves and *pari passu* with all other outstanding senior, secured and unsubordinated obligations of the Issuer, present and future but, in the event of insolvency, only to the extent permitted by applicable laws relating to creditors' rights.

(b) Status of the Guarantee

The Guarantor's obligations under the relevant Guarantee constitute senior, direct, unconditional and unsecured obligations of the Guarantor and rank without preference among themselves and *pari passu* with all other outstanding senior, unsecured and unsubordinated obligations of the Guarantor, present and future, but in the event of insolvency, only to the extent permitted by laws relating to creditors' rights.

4. SECURITY

The Notes are constituted and secured by a Trust Instrument.

Unless otherwise specified in the Final Terms, the Issuer will grant to the Trustee the following security to secure its obligations under each Series of Notes and the relevant Transfer Agreement(s) (if any):

- (a) a first ranking assignment by way of security of all of the Issuer's Rights under the Agency Agreement;
- (b) a first fixed charge and a first ranking assignment by way of security of all of the Issuer's Rights to, under and in respect of, the Collateral Assets;
- (c) a first ranking assignment by way of security of the Issuer's Rights under the Transfer Agreement(s); and
- (d) a first fixed charge and a first ranking assignment by way of security of all of the Issuer's Rights to any Series Accounts in respect of such Series.

Pursuant to the Trust Instrument executed in respect of the first Series of Notes the Trustee on behalf of the Secured Parties in respect of all Series of Notes of the Issuer will also have the benefit of a first floating charge over all present and future rights of the Issuer in respect of the Clearing Accounts and all moneys from time to time standing to the credit of the Clearing Accounts and the debts represented thereby and including, without limitation, all interest accrued and other moneys received in respect thereof and all of its rights, title interest and benefit and all of its entitlement in relation thereto.

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

5. RESTRICTIONS

So long as any of the Notes remains outstanding, the Issuer will not, without the written consent of the Trustee, create or permit within its reasonable control to subsist any charge, mortgage, lien or other encumbrance over the Mortgaged Property other than the Security Interests in respect of all Series of Notes of the Issuer and, in respect of each Series, the Issuer shall not sell, transfer or otherwise dispose of any Mortgaged Property otherwise than pursuant to the Transaction Documents.

6. COLLATERAL ASSETS

(a) Initial Collateral Assets

On the Issue Date in respect of each Series, the Seller(s) will deliver or procure delivery of a Collateral Assets Report which will specify the Collateral Assets for such Series to the Issuer. The interests in the Collateral Assets shall be transferred to the Issuer pursuant to the Transfer Agreement(s). With effect from the delivery of such Collateral Assets Notice, the Collateral Assets will be subject to the Security Interests.

(b) Substitution at direction of the Seller(s)

On any Business Day, provided that an Event of Default under the Collateral Transfer Agreement is not subsisting, a Seller may and shall on any Business Day on which any Collateral Assets transferred by such Seller to the Issuer do not satisfy the Eligibility Criteria substitute Collateral Assets held by the Issuer pursuant to the terms of the applicable

Collateral Transfer Agreement and subject to the Eligibility Criteria, and further subject to the Market Value of the Collateral Assets transferred to the Issuer being at least equal to the Market Value of the Collateral Assets or Equivalent Assets (or the relevant assets which no longer satisfy the Eligibility Criteria) transferred to the Sellers on the date of substitution. On any Business Day a substitution is to be effected, such substitution shall be achieved by the relevant Seller(s) by delivering or procuring delivery of a new Collateral Assets Report to the Issuer and the Collateral Agent setting out the Collateral Assets relating to such Series and the substitution will be effective as of the date of the delivery of the Collateral Assets Report.

(c) **Realisation of Collateral Assets upon Event of Default**

If the Security Interests over any of the Collateral Assets become enforceable pursuant to Condition 12 (*Events of Default*) or as otherwise provided in the Trust Instrument, the Trustee may in its discretion and, if requested by the Noteholders acting by an Extraordinary Resolution, shall (subject to being indemnified and/or secured and/or prefunded by the relevant Noteholders to its satisfaction) realise such Collateral Assets and/or take such action as may be permitted under applicable laws against any obligor in respect of such Collateral Assets. The Trustee will not have any liability as to the consequence of such action and will not have regard to the effect of such action on individual Noteholders.

7. APPLICATION OF PROCEEDS

(a) **General**

All amounts received by the Trustee under the Trust Instrument and each Additional Charged Agreement (if any) (including any monies which represent principal, premium or interest in respect of Notes which have become void under Condition 14 (*Prescription*)) upon realisation of, or enforcement with respect to, the security constituted by or pursuant to the Security Documents in respect of a Series (excluding amounts received upon realisation of, or enforcement with respect to, the floating charge granted pursuant to Clause 8(A)(y) of the Trust Instrument in respect of the first Series of Notes) shall (unless otherwise specified in the Final Terms) be applied in accordance with the order set out below (the "**Priority of Payments**"):

Firstly, to the payment of all amounts due but unpaid to the Trustee;

Secondly, to the payment of all amounts due but unpaid to the Agents on a *pari passu* and *pro rata* basis;

Thirdly, in meeting all claims of the Noteholders in respect of interest due but unpaid on the Notes on a *pari passu* and *pro rata* basis;

Fourthly, in meeting all claims of the Noteholders in respect of principal due but unpaid on the Notes on a *pari passu* and *pro rata* basis

Fifthly, to the payment of all amounts due but unpaid to the Sellers under the Transfer Agreements and to the payment of all amounts due but unpaid to the Guarantor as reimbursement for amounts paid by the Guarantor under the relevant Guarantee, on a *pari passu* and *pro rata* basis; and

Sixthly, any remaining amounts will be paid to the Issuer.

(b) **Clearing Account**

Amounts received upon realisation of, or enforcement with respect to, the security granted over the rights of the Issuer in respect of the Clearing Accounts shall be distributed to the Secured Parties in respect of each Accelerated Series *pari passu* and *pro rata* as to the Clearing Account Amount in respect of each such Accelerated Series. The amount available to be so applied in respect of each Accelerated Series being the **Clearing Account Series Distributable Amount**. The Clearing Account Series Distributable Amount in respect of each Accelerated Series shall be applied in accordance with the first five items of the Priority of Payments in respect of such Series.

All amounts remaining after the Clearing Account Series Distributable Amounts in respect of all Accelerated Series have been applied as described above shall be transferred back to the relevant Clearing Account and shall be subject to the security granted by the Issuer pursuant to Clause 8(A)(y) of the Trust Instrument in respect of the first Series of Notes in accordance with Clause 8(H) of the Trust Instrument in respect of the first Series of Notes.

For the avoidance of doubt, Noteholders in respect of a Series will not have recourse to the Mortgaged Property in respect of other Series other than the Security Interest granted over the Clearing Accounts.

8. TYPES OF NOTES

(a) **Fixed Rate Notes**

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

Interest will be payable in arrear on the Interest Payment Date(s) in each year as specified in the Final Terms, subject as aforesaid.

Interest pursuant to this Condition 8(a), whether for a Fixed Interest Period or a period other than a Fixed Interest Period, shall be calculated by applying the Rate of Interest to:

- (A) in the case of Fixed Rate Notes which are represented by a Global Note, the aggregate outstanding nominal amount of the Fixed Rate Notes represented by such Global Note (or, if they are Partly Paid Notes, the aggregate amount paid up); or
- (B) in the case of Fixed Rate Notes in definitive form, the Calculation Amount;

and, in each case, multiplying such sum by the applicable Fixed Day Count Fraction, and rounding the resultant figure to the nearest sub-unit of the relevant Currency of Issue, half of any such sub-unit being rounded upwards or otherwise in accordance with applicable market convention. Where the Specified Denomination of a Fixed Rate Note in definitive form is a multiple of the Calculation Amount, the amount of interest payable in respect of such Fixed Rate Note shall be the product of the amount (determined in the manner provided above) for the Calculation Amount and the amount by which the Calculation Amount is multiplied to reach the Specified Denomination, without any further rounding.

(b) **Floating Rate Notes**

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

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

Such interest will be payable in arrear on either:

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

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

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

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

The Rate of Interest payable from time to time in respect of Floating Rate Notes will be determined in the manner specified in the Final Terms.

(A) **ISDA Determination for Floating Rate Notes**

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

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

- (1) the Floating Rate Option is as specified in the Final Terms;
- (2) the Designated Maturity is a period specified in the Final Terms; and

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

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

When this sub-paragraph (A) applies, in respect of each relevant Interest Period the Calculation Agent will be deemed to have discharged its obligations under Condition 8(b)(iv) (*Types of Notes – Floating Rate Notes*) in respect of the determination of the Rate of Interest if it has determined the Rate of Interest in respect of such Interest Period in the manner provided in this sub-paragraph (A).

(B) Screen Rate Determination for Floating Rate Notes

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

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

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

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

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

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

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

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

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

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

The Interest Amounts shall be calculated by applying the Rate of Interest to:

- (A) in the case of Floating Rate Notes which are represented by a Global Note, the aggregate outstanding nominal amount of the Notes represented by such Global Note (or, if they are Partly Paid Notes, the aggregate amount paid up); or
- (B) in the case of Floating Rate Notes in definitive form, the Calculation Amount;

and, in each case, multiplying such sum by the applicable Floating Day Count Fraction, and rounding the resultant figure to the nearest sub-unit of the relevant Currency of Issue, half of any such sub-unit being rounded upwards or otherwise in accordance with applicable market convention. Where the Specified Denomination of a Floating Rate Note in definitive form is a multiple of the Calculation Amount, the Interest Amount payable in respect of such Floating Rate Note shall be the product of the amount (determined in the manner provided above) for the Calculation Amount and the amount by which the Calculation Amount is multiplied to reach the Specified Denomination, without any further rounding.

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

The Principal Paying Agent will cause the Rate of Interest and the Interest Amounts for each Interest Period and the relevant Interest Payment Date to be notified to any Stock Exchange upon which the Notes are (as specified in the Final Terms) listed and to be published in accordance with relevant provisions relating to notices as soon as possible after their determination, but in any event no later than the fourth Business Day thereafter. The Interest Amounts and Interest Payment Date so published may subsequently be amended (or appropriate alternative arrangements made by way of

adjustment) without notice in the event of an extension or shortening of the Interest Period. Any such amendment will be promptly notified as aforesaid to each Stock Exchange on which the relevant Floating Rate Notes are for the time being listed and to the Noteholders.

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

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

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

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

(c) **Partly Paid Notes**

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

Interest will accrue on the paid-up nominal amount of such Partly-Paid Notes and as specified in the Final Terms.

(d) **Rounding in respect of all Notes**

Subject to Conditions 8(a) (*Types of Notes – Fixed Rate Notes*) and 8(b)(vi) (*Types of Notes – Floating Rate Notes*), all amounts resulting from any calculations referred to in these provisions will be rounded downwards to the nearest unit or sub-unit of currency or as described in the Final Terms. **Default interest**

If payment to any Noteholder of any amount due in respect of the Notes is improperly withheld or refused, interest shall accrue as provided in the Trust Instrument at the rate specified for the purpose in the Final Terms (or if no such rate is specified, the rate shall be deemed to be zero). References to any payment due or owing in respect of the Notes shall be deemed to include any interest which may be payable under this Condition 8 (*Types Of Notes*).

9. REDEMPTION AND COMPULSORY SALE

(a) Final redemption

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

(b) Redemption at the option of the Issuer

- (i) The Final Terms may specify that the Issuer has the option to redeem all or some of the Notes on the Optional Call Redemption Date(s) at the Optional Call Redemption Amount together with interest to (but excluding) the date of redemption.
- (ii) The Issuer may only exercise such option by giving notice to the Noteholders, the Trustee, the Sellers, the Principal Paying Agent and the Registrar within the Issuer's Option Period (as specified in the Final Terms).
- (iii) In the case of a partial redemption of the Notes, the Notes to be redeemed will be selected individually by lot (where the Notes are in definitive form) or in accordance with the rules of the Clearing Systems (where the Notes are in global form).

(c) Redemption at the option of the Noteholders

- (i) The Final Terms may specify that the Issuer shall, at the option of the Noteholders (either individually or acting together, subject to a minimum percentage of all the Noteholders, as specified in the Final Terms), redeem all or some of the Notes on the Optional Put Redemption Date at the Optional Put Redemption Amount, together with interest to (but excluding) the date of redemption. Notes may be redeemed under this Condition in any multiple of their lowest Specified Denomination.
- (ii) A Noteholder may only exercise such option by giving notice to the Issuer within the Noteholder's Option Period (as specified in the Final Terms). If the Notes are in definitive form, the Noteholder must deposit the relevant Note at the specified office of any Agent together with a duly completed and signed notice of exercise substantially in the form set out in Schedule 3 to the Trust Terms Module (the "**Put Notice**") and the nominal amount thereof to be redeemed and, if less than the full nominal amount of the Notes so surrendered is to be redeemed, an address to which a new Note in respect of the balance of such Notes is to be sent subject to and in accordance with the provisions of Condition 11 (*Payments*). If the Notes are represented by a Global Note, to exercise the right to require redemption of the Note the Noteholder must, within the notice period, give notice of such exercise in accordance with the standard procedures of the Clearing Systems (which may include notice being given on his instruction by the Clearing Systems or any common depositary for them to the Principal Paying Agent by electronic means) in a form acceptable to the Clearing Systems from time to time and, at the same time, present or procure the presentation of the relevant Global Note to the Principal Paying Agent for notation accordingly.
- (iii) Any Put Notice shall be irrevocable except where, prior to the due date of redemption, an Event of Default shall have occurred and be continuing and the

Trustee shall have declared the Notes due and repayable. In such event, a Noteholder may, at its option, elect to withdraw the Put Notice.

(d) **Purchases**

The Issuer, the Guarantor or any of their Subsidiaries may at anytime purchase Notes in any manner and at any price. Any such Notes may be held, reissued, resold, or at the option of the Issuer or the Guarantor, surrendered to any Paying Agent for cancellation.

9.2 Compulsory Sale

The Issuer may compel any beneficial owner of an interest in the Notes to sell its interest in such Notes, or may sell such interest on behalf of such holder, if such holder is not an Eligible Purchaser.

10. TAXATION

10.1 Payment without Withholding

All payments in respect of the Notes by or on behalf of the Issuer or the Guarantor shall be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature (**Taxes**) imposed or levied by or on behalf of the Relevant Jurisdiction, unless the withholding or deduction of the Taxes is required by law. In that event, the Issuer or, as the case may be, the Guarantor will make the required withholding or deduction and shall not pay any additional amounts to the Noteholders in respect thereof.

10.2 Interpretation

In these Conditions, **Relevant Jurisdiction** means the United States of America or any political subdivision or any authority thereof or therein having power to tax or any other jurisdiction or any political subdivision or any authority thereof or therein having power to tax to which the Issuer or the Guarantor, as the case may be, becomes subject in respect of payments made by it of principal or interest on the Notes.

11. PAYMENTS

- (a) Payment of principal and interest will be made by transfer to the registered account of the Noteholder or by the Base Currency cheque drawn on a bank that processes payments in the Base Currency mailed to the registered address of the Noteholder if it does not have a registered account. Payments of principal and payments of interest due otherwise than on an Interest Payment Date will only be made against surrender of the relevant Certificate at the specified office of any of the Agents. Interest on Notes due on an Interest Payment Date will be paid to the holder shown on the register of Noteholders at the close of business on the date (the **Record Date**) being the fifteenth day before the relevant Interest Payment Date.

For the purposes of this Condition, a Noteholder's registered account means the Base Currency account maintained by or on behalf of it with a bank that processes payments in Base Currency, details of which appear on the register of Noteholders at the close of business, in the case of principal and interest due otherwise than on an Interest Payment Date, on the second business day (as defined below) before the due date for payment and, in the case of

interest due on an Interest Payment Date, on the relevant Record Date, and a Noteholder's registered address means its address appearing on the register of Noteholders at that time.

- (b) Where payment is to be made by transfer to a registered account, payment instructions (for value the due date or, if that is not a Business Day (as defined below), for value the first following day which is a Business Day) will be initiated and, where payment is to be made by cheque, the cheque will be mailed, on the Business Day preceding the due date for payment or, in the case of a payment of principal or a payment of interest due otherwise than on an Interest Payment Date, if later, on the Business Day on which the relevant Certificate is surrendered at the specified office of an Agent.

Noteholders will not be entitled to any interest or other payment for any delay after the due date in receiving the amount due if the due date is not a Business Day, if the Noteholder is late in surrendering its Certificate (if required to do so) or if a cheque mailed in accordance with this Condition arrives after the due date for payment.

In this Condition **Business Day** means a day (other than a Saturday or Sunday) on which commercial banks are open for business in London in the case of Notes denominated in USD, New York, in the case of Notes denominated in Yen, Tokyo and in the case of presentation of a Note Certificate, in the place in which the Note Certificate is presented.

- (c) If the amount of principal or interest which is due on the Notes is not paid in full, the Registrar will annotate the register of Noteholders with a record of the amount of principal, premium (if any) or interest in fact paid.
- (d) None of the Issuer, the Guarantor, the Trustee or the Agents will have any responsibility or liability for any aspect of the records relating to, or payments made on account of, beneficial ownership interest in the Global Notes or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.
- (e) If any withholding or deduction arises under or in connection with FATCA, neither the Issuer nor the Guarantor will be required to pay any additional amounts on account of such withholding or deduction.

12. EVENTS OF DEFAULT

Upon the occurrence of an Event of Default, the Trustee at its discretion may, and if requested by the Noteholders acting by an Extraordinary Resolution, shall (subject to being indemnified and/or secured and/or prefunded by the relevant Noteholders to its satisfaction), give notice to the Issuer that the Notes are, and they shall accordingly immediately become, due and repayable at the Early Redemption Amount whereupon the Security Interests shall become enforceable (as provided in the Trust Instrument) and proceeds of realisation of the Mortgaged Property shall be applied as specified in Condition 7 (*Application of Proceeds*) on the date specified in such notice (the **Early Redemption Date**). The Issuer shall promptly notify the Trustee of the occurrence of an Event of Default.

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

- (a) if default is made for a period of 10 days or more in the payment of any sum due in respect of the Notes or any of them; or

- (b) if the Issuer fails to perform or observe any of its other obligations under the Notes or the Transaction Documents and (except where in the opinion of the Trustee, such failure is not capable of remedy when no continuation of such failure or notice served by the Trustee shall be required) such failure continues for a period of 10 days (or such longer period as the Trustee may permit) after notice requiring the same to be remedied shall have been given to the Issuer or the Guarantor, as the case may be, by the Trustee and the Trustee shall have certified such failure is, in its opinion, materially prejudicial to the interests of the Noteholders;
- (c) if any order shall be made by any competent court or any resolution passed for the winding-up or dissolution of the Issuer or the Guarantor other than for the purposes of amalgamation, merger, consolidation, reorganisation or other similar arrangements;
- (d) a Default Notice is delivered to the Defaulting Party pursuant to paragraph 11 of the Collateral Transfer Agreement; or
- (e) any other event specified as an Event of Default in the applicable Final Terms.

13. ENFORCEMENT

The Trustee may at any time, at its discretion and without further notice, and if requested by the Noteholders acting by an Extraordinary Resolution, shall (subject to being indemnified and/or secured and/or prefunded by the relevant Noteholders to its satisfaction), institute such proceedings against the Issuer, the Guarantor or any other party to a Transaction Document as it may think fit to enforce the provisions of the Trust Instrument or any other Transaction Document and, at any time after the Security Interests become enforceable, take such actions as it may think fit to enforce the Security Interests.

No Noteholder shall be entitled to proceed against the Issuer or the Guarantor unless the Trustee, having become bound so to proceed, fails so to do within a reasonable time and such failure is continuing.

In the event that the Issuer fails to make payment of the Early Redemption Amount as and when it becomes due, the Guarantor will be liable for such Early Redemption Amount pursuant to the terms of the relevant Guarantee.

14. PRESCRIPTION

Claims in respect of principal and interest will be prescribed and become void unless the same are made within a period of 10 years in the case of principal or premium (if any) and five years in the case of interest from the Relevant Date relating thereto.

For this purpose, the "**Relevant Date**" means the date on which the payment in respect of the Notes first becomes due and payable. However, if the full amount of the moneys payable on such date has not been received by the Principal Paying Agent or the Trustee, as the case may be, on or prior to such date, the "**Relevant Date**" means the date on which such moneys shall have been so received and notice to that effect shall have been given to the Noteholders in accordance with Condition 16 (*Notices*).

15. REPLACEMENT OF NOTES AND CERTIFICATES

- (a) If any Note is lost, stolen, mutilated, defaced or destroyed it may be replaced, subject to applicable laws, regulations and Stock Exchange or other relevant authority rules or regulations, at the specified office of the Registrar (or such other place of which notice shall have been given in accordance with Condition 16 (*Notices*)). Such replacement is subject to payment by the claimant of the expenses incurred in connection therewith and on such terms as to evidence and indemnity as the Issuer may reasonably require. Mutilated or defaced Notes must be surrendered before replacements will be issued.
- (b) If any Certificate is lost, stolen, mutilated, defaced or destroyed it may be replaced at the specified office of the Registrar upon payment by the claimant of the expenses incurred in connection with the replacement and on such terms as to evidence and indemnity as the Issuer may reasonably require. Mutilated or defaced Certificates must be surrendered before replacements will be issued.

16. NOTICES

All notices regarding Notes will be valid if (A) mailed to them at their respective addresses on the register of Noteholders maintained by the Registrar and (B) if and for so long as the Notes are listed on the Irish Stock Exchange and the Irish Stock Exchange so requires, in one daily newspaper published in Ireland approved by the Trustee. It is expected that any publication as described in the foregoing will be made in (i) the *Financial Times* and/or (ii) the *Irish Times*.

All notices regarding Notes represented by a Global Note will be valid if published as described above or if delivered to the Clearing Systems for communication by them to the Noteholders. Any notice delivered to a Clearing System as aforesaid shall be deemed to have been given on the day of such delivery.

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

Any notice published in a newspaper as aforesaid shall be deemed to have been given on the date of such publication or, if published more than once, on the date of the first such publication or, if published in 2 newspapers, on the date of the first such publication in both newspapers. If publication is not practicable in any such newspaper as is mentioned above, notice will be valid if given in such other manner, and shall be deemed to have been given on such date, as the Trustee shall determine. Any notice mailed to the registered address of a Noteholder as aforesaid shall be deemed to have been given on the seventh day after being so mailed.

17. AGENTS

The duties of each of the Agents shall be as specified in the Trust Instrument and in the Final Terms in respect of the Notes.

The Issuer and the Guarantor reserve the right, subject to the approval of the Trustee, at any time to vary or terminate the appointment of any Agent and to appoint additional or other Agents provided that it will at all times maintain Agents as specified in the Final Terms.

18. MEETINGS OF NOTEHOLDERS, MODIFICATION, WAIVER AND SUBSTITUTION

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

The Trustee may agree, without the consent of the Noteholders, to any modification of, or to any waiver or authorisation of any breach or proposed breach of, any of the Final Terms, Trust Instrument or any other Transaction Document as set out in the next sentence and as more fully set out in the Trust Instrument. The Trustee may so agree if, in the opinion of the Trustee, (a) any such modification, waiver or authorisation is not materially prejudicial to the interests of the Noteholders or (b) any such modification is of a formal, minor or technical nature or to correct a manifest error, or an error which is, in the opinion of the Trustee, proven. The Trustee may determine, without any such consent as aforesaid, that any Event of Default or Potential Event of Default shall not be treated as such provided that it is not, in the opinion of the Trustee, materially prejudicial to the interests of the Noteholders.

Subject as provided in the Trust Instrument, the Trustee, if it is satisfied that it would not be materially prejudicial to the interests of the Noteholders, may agree, without the consent of the Noteholders, to the substitution of any other company in place of the Issuer as principal debtor under the Notes, the Trust Instrument and the Transaction Documents provided that the obligations under or in respect of the Notes shall be guaranteed by the Guarantor provided certain other conditions as set out in Trust Instrument are complied with. No such substitution shall be effective without the consent of the Guarantor.

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

Any such modification, waiver, authorisation, determination or substitution shall be binding on all Noteholders and, unless the Trustee agrees otherwise, any such modification or substitution shall be notified to the Guarantor and to the Noteholders by the Issuer as soon as practicable thereafter.

19. FURTHER ISSUES

The Issuer shall be at liberty from time to time, without the consent of the Noteholders, to create and issue further notes either:

- (a) so as to be consolidated and form a single Series with the Notes (such further Notes, the "**Further Fungible Notes**"), provided that the Issuer provides additional Collateral Assets as security for the original issue of Notes and any Further Fungible Notes pursuant to the relevant Transfer Agreement(s) (and references to "**Notes**" shall thereafter be deemed to be references to such term as amended to take into account the further issue); or
- (b) to form a separate Series from the Notes upon such terms as to security, interest, premium, redemption and otherwise as the Issuer may, in its absolute discretion, at the time of the issue thereof determine.

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

20. LIABILITIES AND INDEMNIFICATION OF THE TRUSTEE

The Trust Instrument contains provisions for the indemnification of the Trustee and for its relief from responsibility, including provisions relieving it from taking proceedings unless indemnified and/or secured and/or prefunded by the relevant Noteholders to its satisfaction. The Trustee is entitled to enter into business transactions with the Issuer, the Guarantor, the Sellers and any obligor in respect of the Collateral Assets or any of their subsidiary or associated companies without accounting for any profit resulting therefrom.

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

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

21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

22. GOVERNING LAW

The Trust Instrument, the Notes, the Transfer Agreement(s) and any non-contractual obligations arising out of or in connection with them are governed by, and will be construed in accordance with, English law. Each Guarantee will be governed by and will be construed in accordance with the laws of the State of New York.

23. JURISDICTION

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

The Issuer has, in the Trust Instrument, irrevocably waived any objection which it may have now or hereafter to the laying of the venue of any Proceedings in any such court and any claim that any such Proceedings have been brought in an inconvenient forum. The Issuer has further irrevocably agreed that a judgment in any Proceedings brought in the courts of England shall be conclusive and binding upon the Issuer and may be enforced in the courts of any other jurisdiction. Nothing contained in this Condition shall limit any right to take Proceedings against the Issuer in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction, whether concurrently or not.

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

FORM OF FINAL TERMS

Set out below is the form of Final Terms which will be completed for each Series of Notes issued under the Programme.

[Date]

Morgan Stanley Secured Financing LLC
Issue of [Aggregate Nominal Amount of Series] [Title of Notes]
under the **U.S.\$ 5,000,000,000**
Collateralised Funding Programme

This document constitutes the Final Terms relating to the issue of Notes described herein.

The Notes have the **Terms** as set out in these Final Terms, which will complete and modify the Base Conditions Module, March 2012 Edition (the **Base Conditions Module**), which are incorporated by reference into these Final Terms (together, the **Conditions**). The Base Conditions Module are set out in full in the Base Prospectus dated 20 March 2012. These Final Terms contain the final terms of the Notes and must be read in conjunction with such Base Prospectus. Full information on the Issuer, the Guarantor and the offer of the Notes is only available on the basis of the combination of these Final Terms and the Base Prospectus. Copies of the Base Prospectus are available from the registered office of the Issuer.

[Include whichever of the following apply or specify as "Not Applicable" (N/A). Italics denote directions for completing the Final Terms.]

(When adding any other final terms or information consideration should be given as to whether such terms or information constitute "significant new factors" and consequently trigger the need for a supplement to the Base Prospectus under Article 16 of the Prospectus Directive.)

(Where the Collateral Assets comprise obligations of 5 or fewer obligors which are legal persons or where an obligor accounts for 20% or more of the Collateral Assets, or where an obligor accounts for a material portion of the Collateral Assets, a supplement to the Base Prospectus will be required containing:

- (a) information relating to each obligor as if it were an issuer drafting a Registration Document for debt and derivative securities with an individual denomination of at least EUR50,000; or*
- (b) if an obligor or guarantor has securities already admitted to trading on a regulated or equivalent market or the obligations are guaranteed by an entity admitted to trading on a regulated or equivalent market, the name, address, country of incorporation, nature of business and name of the market in which its securities are admitted.)*

[It is expected that, unless otherwise agreed with the Dealer, Notes will have a denomination of at least U.S.\$250,000 (or its equivalent at the date of issue of Notes denominated in any other currency as determined by the Dealer).]

1. (a) Issuer: Morgan Stanley Secured Financing LLC.
- (b) Guarantor: Morgan Stanley
2. Description of Notes: [●].
3. (a) Issue Date: [●].
- (b) Issue Price: [[●] per cent. of the aggregate nominal amount.]
4. (a) Status of the Notes: [The Notes will constitute senior, secured obligations of the Issuer and will, save for such exceptions as may be provided by applicable legislation or judicial order, rank *pari passu* and without preference among themselves and *pari passu* with all other outstanding senior, unsubordinated obligations of the Issuer.]
- (b) Status of the Guarantee: The obligations of the Guarantor under the Guarantee are senior, direct, unconditional and unsecured obligations of the Guarantor and rank without preference among themselves and *pari passu* with all other outstanding senior, unsecured and unsubordinated obligations of the Guarantor, present and future, but in the event of insolvency, only to the extent permitted by laws relating to creditors' rights.
5. Date of corporate authorisation for issuance of Notes: [●].

INTEREST

6. Fixed Rate Notes Provisions: [Applicable]/[Not Applicable]
(If not applicable, delete paragraph 6)
7. [The Notes are Fixed Rate Notes which pay interest at the Rate of Interest set out below in sub-paragraph 7(e) on their Outstanding Principal Amount on the Interest Payment Dates set out below.
- (a) Interest Rate Basis: Fixed Rate.
- (b) Interest Payment Dates: [●] in each year from and including [●] [(a short first coupon)/(a long first coupon)] up to and including the Maturity Date, provided that, if any such day is not a Business Day, it shall be adjusted in accordance with the Business Day Convention [for the purposes of payment only].]
- (c) Interest Commencement Date: [●].
- (d) Business Day Convention: [●].

- (e) Rate of Interest: per cent. per annum.]
- The amount of interest payable shall be determined as set out in Condition 8(a) (*Fixed Rate Notes*).
- (f) Additional Business Centre(s) .
and/or Additional Financial Centre(s):
- (g) Fixed Day Count Fraction: [30/360 or Actual/Actual (ICMA)].
- (h) Determination Date: in each year.
- (Insert regular interest payment dates, ignoring issue date or maturity date in the case of a long or short first or last coupon*
- N.B. This will need to be amended in the case of regular interest payment dates which are not of equal duration*
- N.B. Only relevant where Day Count Fraction is Actual/Actual (ICMA))*
8. Floating Rate Notes Provisions: [Applicable]/[Not Applicable].
- (If not applicable, delete paragraph 8)*
9. [The Notes are Floating Rate Notes which pay interest at the applicable Rate of Interest set out in sub-paragraph 9(f) below on their Outstanding Principal Amount on the Specified Interest Payment Dates set out below.
- (a) Interest Rate Basis: Floating Rate.
- (b) Specified Interest Payment Dates: in each year commencing on and including [(a short first coupon)/(a long first coupon)] to and including the Maturity Date, subject to adjustment in accordance with the Business Day Convention specified below. The Scheduled Termination Date and the Maturity Date are adjusted in accordance with the Business Day Convention [for the purpose of payment only].]
- (c) Interest Commencement Date: .
- (d) Business Day Convention: [Modified Following Business Day]/[FRN]/[Following Business Day]/[Preceding Business Day] Convention.
- (e) Additional Business Centre(s) .
and/or Additional Financial Centre(s):
- (f) Manner in which Rate of Interest [ISDA Determination:

is to be determined:

- (i) Floating Rate Option: [●]
- (ii) Designated Maturity: [●]
- (iii) Margin: [●] per cent, [provided that Linear Interpolation (as defined in the ISDA Definitions) shall apply to the first Interest Period].]

/[Screen Rate Determination: [●]]

- (i) Reference Rate: [●]

(Either LIBOR, EURIBOR or other, although additional information is required if other – including fallback provisions in the Agency Agreement)

- (ii) Interest Determination Date(s): [●]

(Second London business day prior to the start of each Interest Period if LIBOR (other than Sterling or euro LIBOR), first day of each Interest Period if Sterling LIBOR and the second day on which the TARGET System is open prior to the start of each Interest Period if EURIBOR or euro LIBOR)

- (iii) Relevant Screen Page: [●]

(In the case of EURIBOR, if not Reuters EURIBOR01 ensure it is a page which shows a composite rate or amend the fallback provisions appropriately)

/[Other].

- (g) Spread: [●]% per annum *(if any)*
- (h) Minimum Interest Rate: [●]% per annum *(if any)*
- (i) Maximum Interest Rate: [●]% per annum *(if any)*
- (j) Floating Day Count Fraction: [Actual/365]/[Actual/365 (Fixed)]/[Actual/365 (Sterling)]/[Actual/360]/[30/360]/[30E/360]/[30E/360 (ISDA)].

PROVISIONS RELATING TO REDEMPTION

- 10. Maturity Date: [●]
- 11. Issuer Call: [Issuer has the option to redeem pursuant to provisions under Condition 9(b) *(Redemption at the option of the Issuer)*]/[Not Applicable].

(If not applicable, delete the remaining sub-paragraphs of this paragraph)

- (a) Optional Call Redemption Date: [●]
- (b) Issuer's Option Period: [●].
- (c) Optional Call Redemption Amount: of each Note and method, if any, of calculation of such amount(s): [●].
12. Noteholders Put: [Noteholders have the option to put pursuant to provisions under Condition 9(c) (*Redemption at the option of the Noteholders*)]/[Not Applicable]
- (If not applicable, delete the remaining sub-paragraphs of this paragraph)*
- (a) Optional Put Redemption Date: [●].
- (b) Noteholder's Option Period: [●].
- (c) Optional Put Redemption Amount of each Note and method, if any, of calculation of such amount(s): [●].
13. Final Redemption Amount: [●].
14. Early Redemption Amount (if specified): [●].

PROVISIONS RELATING TO NOTE

15. Seller(s): [●]
16. Collateral Assets: The Collateral Assets specified in the Collateral Assets Report dated the Issue Date as amended from time to time pursuant to the Collateral Transfer Agreement and subject to compliance with the Eligibility Criteria.
17. Frequency of Noteholders Reports: [Each Business Day]/[other]
18. Noteholders Report available at: [*website to be included*]
19. Transfer Agreements: Collateral Transfer Agreement
[Declaration of Trust]

[Master Participation Agreement]

20. Additional Charging Document: [●]
21. Margin Ratio: [●] per cent.
Minimum aggregate Market Value of the Collateral Assets on Issue Date: [●]
22. Margin Transfer Threshold: U.S.\$100,000
23. Market Value determined by reference to third party quotations: [Applicable]/[Not Applicable].

GENERAL PROVISIONS APPLICABLE TO THE NOTES

24. Closing Date: [●].
25. Pre Closing Date: [●]/[Not Applicable].
26. Form of Notes: [Notes in registered form to be represented on issue by a Global Note registered in the name of a nominee for a common depositary for Euroclear and Clearstream, Luxembourg.]
27. Currency of Issue: [●].
28. Specified Denomination: U.S.\$250,000 and integral multiples of U.S.\$1,000 in excess thereof.
(N.B. this means the minimum integral amount in which transfers can be made).
29. Rating: [The Notes to be issued have [[have not been]/[have been]/[are expected to be]] rated [*insert details*] by [*insert the legal name of the relevant credit rating agency entity(ies)*].]

The rating of a Series of Notes will depend solely upon the rating of the Guarantor and will not have any regard to the Collateral Assets.

(The above disclosure should reflect the rating allocated to Notes of the type being issued under the Programme generally or, where the issue has been specifically rated, that rating.).

[[*Insert the legal name of the relevant credit rating agency entity*] is established in the European Union and is

registered under Regulation (EC) No. 1060/2009 (as amended). [As such *[insert the legal name of the relevant credit rating agency entity]* is included in the list of credit ratings agencies published by the European Securities and Markets Authority on its website in accordance with such Regulation.]

[[Insert the legal name of the relevant non-EU credit rating agency entity] is not established in the European Union and is not registered in accordance with Regulation (EC) No. 1060/2009 (as amended). *[[Insert the legal name of the relevant non-EU credit rating agency entity]* is therefore not included in the list of credit rating agencies published by the European Securities and Markets Authority on its website in accordance with such Regulation.]

[[Insert the legal name of the relevant non-EU credit rating agency entity] is not established in the European Union and has not applied for registration under Regulation (EC) No. 1060/2009 (as amended) (the **CRA Regulation**). However, the application for registration under the CRA Regulation of *[insert the legal name of the relevant EU credit rating agency entity that applied for registration]*, which is established in the European Union and is registered under the CRA Regulation [(and, as such is included in the list of credit rating agencies published by the European Securities and Markets Authority on its website in accordance with such Regulation)], disclosed the intention to endorse credit ratings of *[insert the legal name of the relevant non-EU credit rating agency entity]*. While notification of the corresponding final endorsement decision has not yet been provided by the relevant competent authority the European Securities and Markets Authority has indicated that ratings issued in third countries may continue to be used in the EU by relevant market participants for a transitional period ending on 30 April 2012.]

[[Insert the legal name of the relevant non-EU credit rating agency entity] is not established in the European Union and has not applied for registration under Regulation (EC) No. 1060/2009 (as amended) (the **CRA Regulation**). The ratings *[[have been]/[are expected to be]]* endorsed by *[insert the legal name of the relevant EU-registered credit rating agency entity]* in accordance with the CRA Regulation. *[Insert the legal name of the relevant EU-registered credit rating agency entity]* is established in the European Union and registered the CRA Regulation. [As such *[insert the legal name of the relevant EU credit rating agency entity]* is included in the list of

credit rating agencies published by the European Securities and Markets Authority on its website in accordance with the CRA Regulation.]

[[Insert the legal name of the relevant non-EU credit rating agency entity] is not established in the European Union and has not applied for registration under Regulation (EC) No. 1060/2009 (as amended) (the **CRA Regulation**), but it [is]/[has applied to be] certified in accordance with the CRA Regulation[[EITHER:] and it is included in the list of credit rating agencies published by the European Securities and Markets Authority on its website in accordance with the CRA Regulation] [[OR:] although notification of the corresponding certification decision has not yet been provided by the relevant competent authority and *[insert the legal name of the relevant non-EU credit rating agency entity]* is not included in the list of credit rating agencies published by the European Securities and Markets Authority on its website in accordance with the CRA Regulation.]

[[*Insert legal name of the relevant credit rating agency*] is established in the European Union and has applied for registration under Regulation (EC) No. 1060/2009 (as amended), although notification of the corresponding registration decision has not yet been provided by the relevant competent authority [and *[insert the legal name of the relevant credit rating agency]* is not included in the list of credit rating agencies published by the European Securities and Markets Authority on its website in accordance with such Regulation].]

[[Insert the legal name of the relevant non-EU credit rating agency entity] is not established in the European Union and has not applied for registration under Regulation (EC) No. 1060/2009 (as amended) (the **CRA Regulation**). However, the application for registration under the CRA Regulation of *[insert the legal name of the relevant EU credit rating agency entity that applied for registration]*, which is established in the European Union, disclosed the intention to endorse credit ratings of *[insert the legal name of the relevant non-EU credit rating agency entity]*[, although notification of the corresponding registration decision has not yet been provided by the relevant competent authority and *[insert the legal name of the relevant EU credit rating agency entity]* is not included in the list of credit rating agencies published by the European Securities and Markets Authority on its website in accordance with the CRA Regulation].]

30. Listing: [Not Applicable]/[Yes. An application has been made to the Irish Stock Exchange for Notes to be admitted to the Official List and traded on its regulated market]/[Other].
- [The estimated total expenses related to admission to trading are [●].]
31. [Details relating to Partly Paid Notes (if any): [Not Applicable/give details].]
32. Common Code and ISIN: [[●] and [●] respectively.]/[Not Applicable].
33. Additional Selling Restrictions: **The Notes may not be offered, sold or delivered at any time, directly or indirectly, within the United States or to or for the account of U.S. Persons (as defined in Regulation S under the Securities Act).**
- The Notes may not be legally or beneficially owned at any time by any person other than an Eligible Purchaser. "Eligible Purchaser" means an investor who is (i) a non-U.S. Person (as defined in Regulation S), (ii) a "qualified institutional buyer" (as defined in Rule 144A) and (iii) a "qualified purchaser" (as defined in Section 2(a)(51)(A) of the Investment Company Act and the rules and regulations thereunder).
34. Distribution Fee: [●]/[Not Applicable].
35. Series Account: [●]
36. Clearing Account: [●] (*Details of further Clearing Account to be included if no Clearing Account has been opened in the currency in which the Series is denominated*).

AGENTS AND OTHER PARTIES

37. Party and specified office:
- (a) Trustee: [BNY Mellon Corporate Trustee Services Limited]
- (b) Principal Paying Agent: [The Bank of New York Mellon, London Branch]
- (c) Calculation Agent: Morgan Stanley & Co. International plc.
- (d) Irish Listing Agent: The Bank of New York Mellon (Ireland) Limited
- (e) Paying Agent(s) : [●]
- (f) Registrar: [●]
- (g) Transfer Agent: [●]

- (h) Collateral Agent: The Bank of New York Mellon
- (i) Dealer(s): [(i)] Morgan Stanley & Co. International plc., 25 Cabot Square, Canary Wharf, London E14 4QA
[(ii)] (Give details of any additional Dealers)]
- (j) [[Other]: [●].]

38. ADDITIONAL ELIGIBILITY CRITERIA

[Paragraph[s] (a)[(i)/(ii)/(iii)/(iv)/(v)/(vi)/(vii)] of the Eligibility Criteria are [Applicable/Not Applicable]

[Insert any additional Eligibility Criteria]

(When adding any other final terms consideration should be given as to whether such terms constitute "significant new factors" and consequently trigger the need for a supplement to the Base Prospectus under Article 16 of the Prospectus Directive.)

39. ADDITIONAL TERMS

[Include if applicable]

40. PURPOSE OF FINAL TERMS

[These Final Terms comprise the final terms required for issue and admission to trading on [the Irish]/[Other] Stock Exchange of the Notes described herein pursuant to the Issuer's U.S.\$5,000,000,000 Collateralised Funding Programme.]

41. RESPONSIBILITY

The Issuer accepts responsibility for the information contained in these Final Terms. [[●] has been extracted from [●]. The Issuer confirms that such information has been accurately reproduced and that, so far as it is aware, and is able to ascertain from the information published by [●], no facts have been omitted which would render the reproduced information inaccurate or misleading.]

Signed on behalf of the Issuer:

By: _____

Name:

Title:

USE OF PROCEEDS

The net proceeds from each Series of Notes will be applied by the Issuer to purchase the Collateral Assets applicable to such Series pursuant to the related Transfer Agreement(s).

DESCRIPTION OF THE ISSUER

MORGAN STANLEY SECURED FINANCING LLC

The Issuer

Morgan Stanley Secured Financing LLC, a limited liability corporation incorporated in Delaware, was incorporated on 31 July, 2009 under the laws of Delaware as a special purpose vehicle for the purpose of issuing the Notes. The registered office of the Issuer is at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The telephone number of the Issuer at its registered office is +1 (212) 761-4000. The sole member of the Issuer is Morgan Stanley and Morgan Stanley contributed USD100.00 to the Issuer in exchange for the single class of limited liability interest in the Issuer pursuant to a limited liability company agreement dated 7 August 2009. The charter number of the Issuer is 4715941.

The Business of the Issuer

The Issuer is a finance company whose sole business is providing financing on a secured basis to Morgan Stanley and other members of the Morgan Stanley Group. The Issuer is accordingly dependent on Morgan Stanley's operational infrastructure and other members of the Morgan Stanley Group to repay any amounts lent by the Issuer to such entities.

Financial Information The Issuer's annual financial year-end date is 31 December. The Issuer's accounts are consolidated with those of Morgan Stanley which are incorporated by reference in this Base Prospectus. The Issuer does not prepare financial statements.

Managers of the Issuer

The managers of the Issuer are as follows:

Name	Principal Occupation
Tom Kinnally	Managing Director of Morgan Stanley & Co. Incorporated
Ed Corral	Executive Director of Morgan Stanley & Co. Incorporated
Thomas Wipf	Managing Director of Morgan Stanley & Co. Incorporated

The business address of the managers is 1585 Broadway, New York, NY 10036. There are no potential conflicts of interest between the duties to the Issuer of any of the managers listed above and their private interests and/or other duties.

DESCRIPTION OF THE GUARANTOR

MORGAN STANLEY

Morgan Stanley was originally incorporated under the laws of the State of Delaware on 1 October 1981 under registered number 0923632, and its predecessor companies date back to 1924. Morgan Stanley is a financial holding company regulated by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956, as amended.

Morgan Stanley's legal and commercial name is "Morgan Stanley". Morgan Stanley has its registered office at The Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, U.S.A., and its principal executive offices at 1585 Broadway, New York, New York 10036, U.S.A., telephone number +1 (212) 761-4000.

Information that is required to be disclosed in respect of Morgan Stanley as Guarantor is contained in the documents specified in the section of this Base Prospectus entitled "Documents Incorporated by Reference", all of which have been filed with the Irish Stock Exchange and are incorporated by reference into this Base Prospectus and the Base Prospectus should be read and construed in conjunction with these documents.

Auditors

Deloitte & Touche LLP, the independent registered public accounting firm at Two World Financial Center, New York, New York 10281, U.S.A, has audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Morgan Stanley's consolidated financial statements for the years ended 31 December 2010 and 31 December 2011 and an unqualified opinion has been reported thereon.

Share Capital

The authorised share capital of Morgan Stanley as at 31 December 2011 comprised 3,500,000,000 ordinary shares of nominal value U.S.\$0.01 and 30,000,000 preferred stock of nominal value U.S.\$0.01.

The issued, non-assessable and fully paid up share capital of Morgan Stanley as at 31 December 2011 comprised 1,926,986,130 ordinary shares of nominal value U.S.\$0.01.

Trend Information

Save as disclosed in the documents incorporated by reference into this Base Prospectus, there has been no material adverse change in the prospects of Morgan Stanley and its consolidated subsidiaries since 31 December 2011.

Legal and arbitration proceedings

Save as disclosed in the documents incorporated by reference into this Base Prospectus, there are no, nor have there been any legal, governmental or arbitration proceedings (including any such proceedings which are pending or threatened of which Morgan Stanley or the Morgan Stanley Group is aware), during the 12 month period before the date of this Base Prospectus, involving Morgan

Stanley or the Morgan Stanley Group which may have or have had in the recent past, a significant effect on the financial position or profitability of Morgan Stanley or the Morgan Stanley Group.

Significant Change

Save as disclosed in the documents incorporated by reference into this Base Prospectus, there has been no significant change in the financial or trading position of Morgan Stanley or the Morgan Stanley Group since 31 December 2011.

DESCRIPTION OF THE MASTER COLLATERAL VERIFICATION AGREEMENT

Pursuant to a Master Collateral Verification Agreement between the Issuer, the Sellers and The Bank of New York Mellon of One Wall Street – 4th Floor, New York, NY 10286 as Collateral Agent, dated 23 December 2009, the Collateral Agent will prepare and publish the Noteholder Reports on each Business Day or as otherwise specified in the applicable Final Terms. The Collateral Agent will make the Noteholder Reports available to the Noteholders on an internal secure website: AccessEdge. Pursuant to the Master Collateral Verification Agreement the Collateral Agent will also verify the composition of the Collateral Assets against the Eligibility Criteria and notify the relevant Seller and the Issuer of any incorrect allocation on such Business Day.

Description of The Bank of New York Mellon

The Bank of New York Mellon, a wholly owned subsidiary of The Bank of New York Mellon Corporation, is incorporated, with limited liability by Charter, under the Laws of the State of New York by special act of the New York State Legislature, Chapter 616 of the Laws of 1871, with its Head Office situate at One Wall Street, New York, NY 10286, U.S.A. and having a branch registered in England & Wales with FC No 005522 and BR No 000818 with its principal office in the United Kingdom situated at One Canada Square, London E14 5AL.

The Bank of New York Mellon's corporate trust business services \$12 trillion in outstanding debt from 55 locations around the world. It services all major debt categories, including corporate and municipal debt, mortgage-backed and asset-backed securities, collateralised debt obligations, derivative securities and international debt offerings. The Bank of New York Mellon's corporate trust and agency services are delivered through The Bank of New York Mellon and The Bank of New York Mellon Trust Company, N.A.

The Bank of New York Mellon Corporation is a global financial services company focused on helping clients manage and service their financial assets, operating in 34 countries and serving more than 100 markets. The company is a leading provider of financial services for institutions, corporations and high-net-worth individuals, providing superior asset management and wealth management, asset servicing, issuer services, clearing services and treasury services through a worldwide client-focused team. It has more than \$23 trillion in assets under custody and administration and more than \$1.1 trillion in assets under management. Additional information is available at bnymellon.com.

Removal and termination of the Collateral Agent

Under the Master Collateral Verification Agreement, the Collateral Agent may at any time resign and terminate its obligations upon at least thirty (30) days' prior written notice to the Issuer and the Issuer, upon at least sixty (60) days' prior written notice to the Collateral Agent, may remove and discharge the Collateral Agent (or any successor collateral agent thereafter appointed) from the performance of its obligations. Promptly after the receipt or giving (as applicable) of notice of removal of the Collateral Agent, the Issuer shall appoint a successor collateral agent.

TAXATION

European Union Savings Taxation

Under EC Council Directive 2003/48/EC on the taxation of savings income, Member States are required to provide to the tax authorities of another Member State details of payments of interest (or similar income) paid by a person within its jurisdiction to an individual resident in that other Member State. However, for a transitional period, Luxembourg and Austria are instead required (unless during that period they elect otherwise) to operate a withholding system in relation to such payments (the ending of such transitional period being dependent upon the conclusion of certain other agreements relating to information exchange with certain other countries). A number of non-EU countries and territories including Switzerland have adopted similar measures (a withholding system in the case of Switzerland).

The European Commission has proposed certain amendments to the Directive which may, if implemented, amend or broaden the scope of the requirements described above.

United States Federal Income Taxation

Any U.S. federal tax discussion in this Base Prospectus was not intended or written to be used, and cannot be used, by any taxpayer for purposes of avoiding U.S. federal income tax penalties that may be imposed on the taxpayer. Any such tax discussion was written to support the promotion or marketing of the Notes to be issued or sold pursuant to this Base Prospectus. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

The following is a general summary of the principal U.S. federal income tax consequences that may be relevant with respect to the purchase, ownership and disposition of the Notes by an initial holder of a Note. This summary addresses only the U.S. federal income tax considerations of holders that acquire the Notes at their original issuance and that will hold the Notes as capital assets. This summary does not purport to address all U.S. federal income tax matters that may be relevant to a particular holder of Notes. This summary is based on the United States Internal Revenue Code of 1986, as amended (the **Code**), U.S. Treasury Regulations and judicial and administrative interpretations thereof, in each case as in effect and available on the date of this Base Prospectus. All of the foregoing are subject to change, which change could apply retroactively and could affect the tax consequences described below.

For the purposes of this summary, a **Non-U.S. Holder** is a beneficial owner of a Note that is not, for U.S. federal income tax purposes: (i) a citizen or resident of the United States; (ii) a corporation or other entity treated as a corporation created or organized in or under the laws of the United States or any state thereof (including the District of Columbia); (iii) an estate the income of which is subject to U.S. federal income taxation regardless of its source; or (iv) a trust if (x) a court within the U.S. is able to exercise primary supervision over its administration and (y) one or more U.S. persons have the authority to control all of the substantial decisions of such trust. If a partnership holds Notes, the tax treatment of a partner will generally depend upon the status of the partner and upon the activities of the partnership. Partners of partnerships holding Notes should consult their tax advisors.

Taxation of Non-U.S. Holders

The Issuer intends to treat the Notes as debt for U.S. federal income tax purposes. Under current U.S. federal income tax law and subject to the discussion of backup withholding in the following section:

- (a) Payments of principal and interest by the Issuer or any Paying Agent to any holder of a Note who is a Non-U.S. Holder will not be subject to U.S. federal withholding tax, provided that, in the case of amounts treated as interest with respect to Notes issued with a maturity of more than 183 days: (i) the amount of the payment generally is not determined by reference to any receipts, sales or other cash flow, income or profits, change in value of any property of, or dividend or similar payment made by, the Issuer or a person related to the Issuer; (ii) the holder does not actually or constructively own 10 per cent. or more of the total combined voting power of all classes of stock of the Issuer entitled to vote; (iii) the holder is not a controlled foreign corporation related to the Issuer through stock ownership for U.S. federal income tax purposes; (iv) the holder is not a bank receiving interest described in Section 881(c)(3)(A) of the Code; and (v) the certification requirement described below has been fulfilled with respect to the beneficial owner.
- (b) A Non-U.S. Holder of a Note will generally not be subject to U.S. federal income tax on any gain or income realised upon the sale, exchange, retirement or other disposition of a Note, provided that (i) in the case of Notes issued with a maturity of more than 183 days, the conditions in paragraph (a) above are satisfied and (ii) neither the holder, nor a partner, fiduciary, settler or beneficiary of the holder if the holder is a partnership or an estate or trust, or a person holding a power over an estate or trust administered by a fiduciary holder, is considered as being or having been present or engaged in a trade or business in the United States or having or having had a permanent establishment therein, or having a current or former relationship with the United States, including a relationship as a citizen or resident thereof or based on an individual's presence in the United States for 183 days or more in the individual's taxable year.
- (c) The certification requirement referred to in paragraph (a) generally will be fulfilled if the beneficial owner of a Note (or a financial institution holding the Note on behalf of the beneficial owner) furnishes to the applicable withholding agent an Internal Revenue Service (**IRS**) Form W-8BEN, on which the beneficial owner certifies under penalties of perjury that it is not a "United States person" as defined in Section 7701(a)(30) of the Code.

Backup Withholding and Information Reporting

Information returns may be filed with the IRS in connection with payments on the Notes unless the Non-U.S. Holder complies with certification procedures to establish that it is not a United States person. The certification procedures required to claim the exemption from withholding tax on interest described above will satisfy the certification requirements necessary to avoid backup withholding as well.

Payments on the sale, exchange or other disposition of a Note made to or through a foreign office of a broker will generally not be subject to information reporting or backup withholding. However, if the broker is a U.S. Controlled Person, payments on the sale, exchange or other disposition of the Note made to or through a United States or foreign office of the broker will be subject to information reporting unless the beneficial owner has furnished the broker with documentation upon which the broker can rely to treat the payment as made to a beneficial owner that is a foreign person, and the broker has no actual knowledge or reason to know that any of the information or certifications associated with this documentation is incorrect.

For purposes of this discussion, a **U.S. Controlled Person** means (i) a United States person (as defined in the Code), (ii) a controlled foreign corporation for U.S. federal income tax purposes, (iii) a foreign person 50% or more of whose gross income was effectively connected with the conduct of a United States trade or business for a specified three-year period, or (iv) a foreign partnership, if at any time during its tax year, one or more of its partners are United States persons who, in the aggregate, hold more than 50% of the partnership's income or capital interest or if, at any time during its tax year, it is engaged in the conduct of a trade or business in the United States.

THE U.S. FEDERAL INCOME TAX DISCUSSION SET FORTH ABOVE IS INCLUDED FOR GENERAL INFORMATION ONLY AND MAY NOT BE APPLICABLE DEPENDING UPON A HOLDER'S PARTICULAR SITUATION. PROSPECTIVE INVESTORS IN THE NOTES SHOULD CONSULT THEIR OWN TAX ADVISERS WITH RESPECT TO THE TAX CONSEQUENCES TO THEM OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE NOTES, INCLUDING THE TAX CONSEQUENCES UNDER STATE, LOCAL, NON-U.S. AND OTHER TAX LAWS AND THE POSSIBLE EFFECTS OF CHANGES IN FEDERAL OR OTHER TAX LAWS.

SUBSCRIPTION AND SALE AND TRANSFER RESTRICTIONS

The Issuer will enter into a Placing Agreement with the Dealer(s) in respect of each issue of a Series of Notes pursuant to which the Dealer(s) will, among other things, agree to procure subscription for or subscribe and pay for the relevant Notes.

United States

The Notes and the guarantee thereof have not been and will not be registered under the Securities Act or with any securities regulatory authority of any state or other jurisdiction of the United States. Consequently, the Notes and the guarantee thereof may not be offered, sold, resold, delivered or transferred within the United States or to, or for the account or benefit of, U.S. Persons (as defined in Regulation S). The Notes have not been approved or disapproved by the United States Securities and Exchange Commission or any other securities commission or other regulatory authority in the United States, nor have the foregoing authorities reviewed or passed upon the accuracy or adequacy of this Base Prospectus or any supplement to this Base Prospectus. In addition, the Issuer has not been and will not be registered as an "investment company" under the 1940 Act. Accordingly, the Notes may only be sold and transferred to a person that is an Eligible Purchaser (as defined below).

"**Eligible Purchasers**" are defined as persons that are both (A)(1) not "U.S. persons" as defined in Regulation S (**Regulation S**) under the Securities Act (such persons **U.S. Persons**) outside the United States in an offshore transaction complying with Rule 903 or Rule 904 of Regulation S and (2) "qualified institutional buyers" as defined in Rule 144A (**Rule 144A**) under the Securities Act (**QIBs**) and "qualified purchasers" as defined in Section 2(a)(51)(A) of the Investment Company Act 1940, as amended and the rules and regulations thereunder (**QPs**) purchasing for their own account or for the account of a QIB and (B) in accordance with all applicable securities laws of the states of the United States and any other applicable jurisdictions.

Each Global Note shall contain a legend in substantially the form set out in the Trust Deed.

The Notes will be subject to the following selling restrictions unless otherwise provided in the relevant supplement to this Base Prospectus or the relevant Final Terms. Each Dealer, and each further Dealer appointed under the Programme (1) has acknowledged that the Notes have not been and will not be registered under the Securities Act, or any securities laws of any state in the United States, are subject to U.S. tax law requirements, and the Notes are not being offered or sold and may not be offered, sold or delivered at any time, directly or indirectly, within the United States or to or for the account or benefit of U.S. Persons (as defined in Regulation S under the Securities Act); (2) has represented, as a condition to acquiring any interest in the Notes, that neither it nor any persons for whose account or benefit the Notes are being acquired is a U.S. Person, is located in the United States, or was solicited to purchase Notes while present in the United States; (3) has agreed not to offer, sell or deliver any of the Notes, directly or indirectly, in the United States or to any U.S. Person; (4) has agreed that, at or prior to confirmation of sale of any Notes (whether upon original issuance or in any secondary transaction), it will have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases Notes from it a written notice containing language substantially the same as the foregoing; and (5) has agreed that it will not offer or sell any such Notes to, or for the account or benefit of, any person other than an Eligible Purchaser. As used herein, "United States" means the United States of America (including the states and the District of Columbia), its territories and possessions.

Each purchaser of Notes, by accepting delivery of this Base Prospectus, the relevant Final Terms and the Notes, will be deemed to have represented, agreed and acknowledged that:

1. It is neither located in the United States nor a U.S. Person, and it is not purchasing for, or for the account or benefit of, any such person. It (a) is an Eligible Purchaser, (b) was not formed for the purpose of investing in the Notes or the Issuer, (c) is not a broker dealer which owns and invests on a discretionary basis less than U.S.\$25,000,000 in securities of unaffiliated issuers, (d) is not a participant-directed employee plan such as a 401(k) plan and (e) is acting for its own account, or the account of one or more Eligible Purchasers.
2. It understands that the Notes and the relevant Guarantee have not been and will not be registered under the Securities Act and that it will not at any time offer, sell, pledge or otherwise transfer such Notes except in an offshore transaction in accordance with Rule 903 or Rule 904 of Regulation S to an Eligible Purchaser in accordance with any applicable securities laws of any State of the United States and in a transaction that will not cause the Issuer to become required to register as an investment company under the Investment Company Act.
3. It understands that the Issuer may receive a list of participants holding positions in the Global Notes from one or more book entry depositaries.
4. It understands that the Issuer has the power to compel any beneficial owner of the Notes that is not an Eligible Purchaser to sell its interest in the Notes, or may sell such interest on behalf of such owner. The Issuer has the right to refuse to honour the transfer of an interest in the Notes to any person who is not an Eligible Purchaser. Any purported transfer of the Notes to a purchaser that does not comply with the requirements of the transfer restrictions herein will be of no force and effect and will be void ab initio.
5. The Global Note, unless the Issuer determines otherwise in accordance with applicable law, will bear a legend in or substantially in the following form:

"THIS NOTE AND THE GUARANTEE HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR WITH ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 903 OR 904 UNDER THE SECURITIES ACT TO AN ELIGIBLE PURCHASER (AS DEFINED BELOW) IN A TRANSACTION THAT WILL NOT CAUSE THE ISSUER TO BECOME REQUIRED TO REGISTER AS AN INVESTMENT COMPANY UNDER THE U.S. INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE "**INVESTMENT COMPANY ACT**"). "**ELIGIBLE PURCHASER**" MEANS AN INVESTOR WHO IS (I) A NON-U.S. PERSON (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT), (II) A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) AND (III) A "QUALIFIED PURCHASER" (AS DEFINED IN SECTION 2(a)(51)(A) OF THE INVESTMENT COMPANY ACT AND THE RULES AND REGULATIONS THEREUNDER)."
6. It understands that the Issuer and others will rely upon the truth and accuracy of the foregoing acknowledgements, representations and agreements.

United Kingdom

Each Dealer appointed under the Programme will be required to represent and agree that:

- (a) in relation to any Notes which have a maturity of less than one year, (i) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (ii) it has not offered or sold and will not offer or sell any Notes other than to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the Notes would otherwise constitute a contravention of Section 19 of the FSMA by the Issuer;
- (b) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to any Notes in, from or otherwise involving the United Kingdom; and
- (c) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an 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 any Notes in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer.

Norway

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a **Relevant Member State**), each Dealer has represented and agreed, and each further Dealer appointed under the Programme will be required to represent and agree, that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the **Relevant Implementation Date**) it has not made and will not make an offer of Notes which are the subject of the offering contemplated by this Offering Circular as completed by the final terms in relation thereto to the public in that Relevant Member State except that it may, with effect from and including the Relevant Implementation Date, make an offer of such Notes to the public in that Relevant Member State:

- (a) at any time to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;
- (b) at any time to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than EUR43,000,000; and (3) an annual net turnover of more than EUR50,000,000, as shown in its last annual or consolidated accounts and who is registered with the Oslo Stock Exchange as a professional investor;
- (c) at any time to fewer than 100 natural or legal persons (other than qualified investors as defined in the Prospectus Directive) subject to obtaining the prior consent of the relevant Dealer or Dealers nominated by the Issuer for any such offer; or
- (d) at any time in any other circumstances falling within Article 3(2) of the Prospectus Directive,

provided that no such offer of Notes referred to in (a) to (d) above shall require the Issuer or any Dealer to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

For the purposes of this provision, the expression **an offer of Notes to the public** in relation to any Notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Notes to be offered so as to enable an investor to decide to purchase or subscribe the Notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression Prospectus Directive means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

Sweden

Each Dealer appointed under the Programme will be required to confirm and agree that it will not, directly or indirectly, offer for subscription or purchase or issue invitations to subscribe for or buy Notes or distribute any draft or definite document in relation to any such offer, invitation or sale except in circumstances that will not result in a requirement to prepare a prospectus pursuant to the provisions of the Swedish Financial Instruments Trading Act (*lag (1991:980) om handel med finansiella instrument*).

Denmark

Each Dealer appointed under the Programme will be required to represent and agree that the Notes have not been offered or sold and will not be offered, sold or delivered directly or indirectly in the Kingdom of Denmark by way of a public offering, unless in compliance with the Danish Securities Trading Act, Consolidation Act No. 848 of 19 August 2008 as amended from time to time and any Orders issued thereunder.

Portugal

Each Dealer appointed under the Programme will be required to agree that:

- (i) no document, circular, advertisement or any offering material in relation to the Notes has been or will be subject to approval by the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*, the **CMVM**);
- (ii) it has not directly or indirectly taken any action or offered, advertised or sold or delivered and will not directly or indirectly offer, advertise, sell, re-sell, re-offer or deliver any Notes in circumstances which could qualify as a public offer (*oferta pública*) pursuant to the Portuguese Securities Code (*Código dos Valores Mobiliários*, the **CVM**), and/or in circumstances which could qualify the issue of the Notes as an issue or public placement of securities in the Portuguese market;
- (iii) it has not, directly or indirectly, distributed and will not, directly or indirectly, distribute to the public the Prospectus or any document, circular, advertisements or any offering material;
- (iv) all offers, sales and distributions of the Notes have been and will only be made in Portugal in circumstances that, pursuant to the CVM, qualify as a private placement of Notes (*oferta particular*), all in accordance with the CVM;
- (v) pursuant to the CVM the private placement in Portugal or near Portuguese residents of Notes by public open companies ("*sociedades abertas*") or by companies that are issuers of securities listed on a market needs to be notified to the CMVM for statistical purposes; and

- (vi) it will comply with all applicable provisions of the CVM and any applicable CMVM Regulations and all relevant Portuguese laws and regulations, in any such case that may be applicable to it in respect of any offer or sales of Notes by it in Portugal.

Each Dealer appointed under the Programme will be required to agree that it shall comply with all applicable laws and regulations in force in Portugal and with the Directive 2003/71/EC of the European Parliament and of the Council of 4th November, 2003 regarding the placement of any Notes in the Portuguese jurisdiction or to any entities which are resident in Portugal, including the publication of a Prospectus, when applicable, and that such placement shall only be authorised and performed to the extent that there is full compliance with such laws and regulations.

France

Each of the Dealers appointed under the Programme will be required to represent and agree and the Issuer has represented and agreed that:

It has not offered or sold and will not offer or sell, directly or indirectly, Notes to the public in France, and has not distributed or caused to be distributed and will not distribute or cause to be distributed to the public in France, the Base Prospectus, the relevant Final Terms or any other offering material relating to the Notes, and that such offers, sales and distributions have been and will be made in France only to (a) providers of investment services relating to portfolio management for the account of third parties, and/or (b) qualified investors (*investisseurs qualifiés*), other than individuals, all as defined in, and in accordance with, Articles L.411-1, L.411-2, D.411-1 to D.411-3 of the French *Code monétaire et financier*.

Italy

The offering of the Notes has not been registered pursuant to Italian securities legislation and, accordingly, no Notes may be offered, sold or delivered, nor may copies of the Base Prospectus or of any other document relating to the Notes be distributed in the Republic of Italy, except:

- (i) to qualified investors (*investitori qualificati*), as defined pursuant to Article 100 of Legislative Decree No. 58 of 24 February 1998, as amended (the **Financial Services Act**) and Article 34-ter, first paragraph, letter (b) of CONSOB Regulation No. 11971 of 14 May 1999, as amended from time to time (**Regulation No. 11971**); or
- (ii) in other circumstances which are exempted from the rules on public offerings pursuant to Article 100 of the Financial Services Act and Regulation No. 11971.

Any offer, sale or delivery of the Notes or distribution of copies of the Base Prospectus or any other document relating to the Notes in the Republic of Italy under (i) or (ii) above must be:

- (a) made by an investment firm, bank or financial intermediary permitted to conduct such activities in the Republic of Italy in accordance with the Financial Services Act, CONSOB Regulation No. 16190 of 29 October 2007 (as amended from time to time) and Legislative Decree No. 385 of 1 September 1993, as amended (the **Banking Act**); and
- (b) in compliance with Article 129 of the Banking Act, as amended, and the implementing guidelines of the Bank of Italy, as amended from time to time, pursuant to which the Bank of Italy may request information on the issue or the offer of securities in the Republic of Italy; and

- (c) in compliance with any other applicable laws and regulations or requirement imposed by CONSOB or other Italian authority.

Austria

No prospectus has been or will be approved and/or published pursuant to the Austrian Capital Markets Act (*Kapitalmarktgesetz*) as amended. Neither this document nor any other document connected therewith constitutes a prospectus according to the Austrian Capital Markets Act and neither this document nor any other document connected therewith may be distributed, passed on or disclosed to any other person in Austria, save as specifically agreed with the Dealers. No steps may be taken that would constitute a public offering of the Notes in Austria and the offering of the Notes may not be advertised in Austria. Each Dealer appointed under the Programme will be required to represent and agree that it will offer the Notes in Austria only in compliance with the provisions of the Austrian Capital Markets Act and all other laws and regulations in Austria applicable to the offer and sale of the Notes in Austria.

Belgium

With regard to Notes having a maturity of less than 12 months (and which therefore fall outside the scope of the Prospectus Directive), this Base Prospectus has not been, and it is not expected that it will be, submitted for approval to the Belgian Banking, Finance and Insurance Commission. Accordingly, each Dealer has represented and agreed, and each further Dealer appointed under the Programme will be required to represent and agree, that it shall refrain from taking any action that would be characterised as or result in a public offering of these Notes in Belgium in accordance with the Prospectus Law on public offerings of investment instruments and the admission of investment instruments to trading on regulated markets, as amended or replaced from time to time.

Greece

Each Dealer appointed under the Programme will be required to represent and agree that it has not publicly offered or sold and will not publicly offer or sell any Notes, in, or to persons in, the Hellenic Republic, or engage in advertisements, notices, statements or other actions in the Hellenic Republic, with a view to attracting resident investors in the Hellenic Republic to acquire Notes. All applicable provisions of law 3401/2005 must be complied with in respect of anything done with regard to the public offering of Notes in, from or otherwise involving the Hellenic Republic.

Cyprus

Each Dealer appointed under the Programme will be required to represent, warrant and agree that:

- (a) in relation to the Notes, it will not provide from within Cyprus all or any "Investment Services or Activities" or "Ancillary Services" (as such terms are defined in the Markets in Financial Instruments and Activities and Regulated Markets Law, Law 144(I) of 2007 and any Directives issued pursuant thereto ("IS Law") or otherwise provide Investment Services or Activities and/or Ancillary Services from outside Cyprus to residents or persons domiciled in Cyprus or otherwise conclude in Cyprus any transaction relating to such Investment Services and Activities and/or Ancillary Services in contravention of the IS Law and the regulations made or pursuant thereto; and
- (b) it will not issue an offer or invitation to subscribe or purchase or otherwise procure subscribers or purchasers for the Notes within or in Cyprus except in compliance with the provisions of the Public Offer and Prospectus Law, Law 114(I)/2005 or the Companies Law, Cap 113 of the Laws of Cyprus, as amended.

Without prejudice to the above, the Notes shall not be advertised, offered, transferred or sold as part of their initial distribution or at any time thereafter to or for the benefit of any persons (including legal and non-legal entities) resident, incorporated, established, domiciled or having their usual residence in Cyprus or to any such person located within the territory of Cyprus except to the extent permitted by and in accordance with Cyprus law and regulations.

People's Republic of China

Each Dealer appointed under the Programme will be required to represent and agree that neither it nor any of its affiliates has offered or sold or will offer or sell any of the Notes in the People's Republic of China (excluding Hong Kong, Macau and Taiwan) as part of the initial distribution of the Notes.

Japan

The Notes have not been and will not be registered under the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended; the **FIEA**) and each Dealer appointed under the Programme will be required to represent and agree that it will not offer or sell any Notes, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (as defined under Item 5, Paragraph 1, Article 6 of the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949, as amended)), or to others for re offering or resale, directly or indirectly, in Japan or to, or for the benefit of, a resident of Japan except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the FIEA and any other applicable laws, regulations and ministerial guidelines of Japan.

Public Offer Selling Restriction under the Prospectus Directive

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a **Relevant Member State**), each Dealer appointed under the Programme will be required to represent and agree that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the **Relevant Implementation Date**) it has not made and will not make an offer of Notes which are the subject of the offering contemplated by this Base Prospectus to the public in that Relevant Member State, except that it may, with effect from and including the Relevant Implementation Date, make an offer of Notes to the public in that Relevant Member State:

- (a) to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- (b) to fewer than 100 or, if the relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive) subject to obtaining the prior consent of the relevant Dealer for any such Notes; or
- (c) in any other circumstances falling within Article 3(2) of the Prospectus Directive,

provided that no such offer of Notes shall require the Issuer or any Dealer to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

For the purposes of this provision, the expression an **offer of Notes to the public** in relation to any Notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Notes to be offered so as to enable an investor

to decide to purchase or subscribe the Notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member.

General

Each Dealer appointed under the Programme will be required to represent and agree that it will (to the best of its knowledge and belief) comply with all applicable securities laws and regulations in force in any jurisdiction in which it purchases, offers, sells or delivers Notes or possesses or distributes this Base Prospectus and will obtain any consent, approval or permission required by it for the purchase, offer, sale or delivery by it of Notes under the laws and regulations in force in any jurisdiction to which it is subject or in which it makes such purchases, offers, sales or deliveries and the Issuer shall not have any responsibility therefor.

Neither the Issuer nor the Trustee represents, nor will any Dealer appointed under the Programme represent, that Notes may at any time lawfully be sold in compliance with any applicable registration or other requirements in any jurisdiction, or pursuant to any exemption available thereunder, or assumes any responsibility for facilitating such sale.

With regard to each Series of Notes, the relevant Dealer(s) will be required to comply with such other additional restrictions as the Issuer and the relevant Dealer(s) shall agree and as shall be set out in the applicable Final Terms.

NO OWNERSHIP BY U.S. PERSONS

The Notes may not be legally or beneficially owned by U.S. Persons *at any time*. Each holder and each beneficial owner of a Note hereby represents, as a condition to purchasing or owning the Note or any beneficial interest therein, that neither it nor any person for whose account or benefit the Notes are being purchased is located in the United States, is a U.S. Person or was solicited to purchase the Notes while present in the United States. Each holder and each beneficial owner of a Note hereby agrees not to offer, sell or deliver any of the Notes, at any time, directly or indirectly in the U.S. or to any U.S. Person. The term "U.S. Person" will have the meaning ascribed to it in Regulation S under the Securities Act.

GENERAL INFORMATION

Authorisation

Morgan Stanley Secured Financing LLC

The establishment of the Programme and the issue of Notes have been duly authorised by resolutions of the Board of Directors of the Issuer dated 20 October 2009.

Morgan Stanley

The establishment of the Programme and the giving of the relevant Guarantees was duly authorised by Morgan Stanley pursuant to general contracts resolutions adopted at a meeting of the Board of Directors of Morgan Stanley held on 19 September 2006 as amended on 25 December 2009, 15 July 2010 and 19 January 2011.

Listing of Notes

It is expected that each Series of Notes which is to be admitted to trading on the Irish Stock Exchange's regulated market and to be listed on the Irish Stock Exchange will be admitted separately as and when issued, subject only to the issue of a Global Note or Notes initially representing the Notes of such Series. The Base Prospectus has been approved by the Central Bank, as competent authority under the Prospectus Directive. The Central Bank only approves this Base Prospectus as meeting the requirements imposed under Irish and EU law pursuant to the Prospectus Directive. Such approval relates only to Notes which are to be admitted to trading on the regulated market of the Irish Stock Exchange or other regulated markets for the purposes of Directive 2004/39/EC or which are to be offered to the public in any member state of the EEA. Application has been made to the Irish Stock Exchange for the Notes to be admitted to the Official List and trading on its regulated market.

Notes may also be issued pursuant to the Programme which will not be listed on the Irish Stock Exchange or any other stock exchange or which will be listed on such stock exchange as the Issuer and the Dealer may agree. The relevant Final Terms in respect of any Series will specify whether or not the relevant Notes will be listed on the Irish Stock Exchange (or whether the relevant Securities will be listed on any other stock exchange).

All material expenses relating to listing or to the approval of this Base Prospectus by the Central Bank as a base prospectus (for the purposes of the Prospectus Directive) will be paid by the Arranger.

The Bank of New York Mellon is acting solely in its capacity as listing agent for the Issuer in connection with the Notes and is not itself seeking admission of the Notes to the official list of the Irish Stock Exchange or to trading on the regulated market of the Irish Stock Exchange for the purposes of the Prospectus Directive.

Documents On Display

For the period of 12 months following the date of this Base Prospectus, copies of the following documents (together with any other documents specified in any relevant supplement to this Base Prospectus) will, when published (to the extent applicable), be available in physical form during normal business hours on any weekday (Saturdays, Sundays and public holidays excepted) at the registered office of the Issuer and from the specified offices of the Paying Agents (if any) in respect of such Notes:

- (i) the Memorandum and Articles of Association of the Issuer;
- (ii) the Certificate of Incorporation and Amended and Restated By-laws of the Guarantor;
- (iii) the Trust Instrument relating to such Notes (and the documents incorporated therein, including, *inter alia*, the Agency Agreement, the relevant Guarantee and Transfer Agreements;
- (iv) a copy of this Base Prospectus and any supplement to this Base Prospectus relating to such Notes, together with any other document required or permitted to be published by the Irish Stock Exchange; and
- (v) any future information memoranda, prospectus, offering circulars and supplements including Issue Terms (save that, any Issue Terms relating to Notes which are neither admitted to trading on a regulated market in the European Economic Area nor offered in the European Economic Area in circumstances where a prospectus is required to be published under the Prospectus Directive will only be available for inspection by a holder of such Note and such holder must produce evidence satisfactory to the Issuer and Paying Agent as to its holding of Notes and identity) to this Base Prospectus and any other documents incorporated therein by reference.

Clearing Systems

The Notes (other than those in definitive form) will be accepted for clearance through Euroclear and Clearstream, Luxembourg (which are the entities in charge of keeping records) (unless otherwise specified in the applicable Final Terms). The appropriate Common Code and ISIN for each Series allocated by Euroclear and Clearstream, Luxembourg will be specified in the applicable Final Terms. If the Notes are to clear through an additional or alternative clearing system the appropriate information will be specified in the applicable Final Terms.

The address for Euroclear is Euroclear Bank SA/NV, 1 Boulevard du Roi Albert II, B-1210 Brussels, Belgium and the address for Clearstream, Luxembourg is Clearstream Banking, 42 Avenue J.F.Kennedy, L-1855 Luxembourg.

Significant or Material Change

Save as disclosed in the documents incorporated by reference into this Base Prospectus, there has been no significant change in the financial or trading position of the Issuer or of the Guarantor and there has been no material adverse change in the financial position or prospects of the Issuer since the date of its incorporation.

Litigation

Save as disclosed in the documents incorporated by reference into this Base Prospectus, there are no governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the Issuer is aware) since the date of its incorporation which may have or have in such period had a significant effect on the financial position or profitability of the Issuer.

Conditions for Determining Price

The price and amount of Notes to be issued under the Programme will be determined by the Issuer and the Dealer at the time of issue in accordance with prevailing market conditions.

Auditors

The auditors of the Guarantor are Deloitte & Touche LLP of Two World Financial Center, New York, New York 10281, U.S.A.

Post-Issuance Information

The Issuer does not intend to provide any post issuance information in relation to any Series of Notes or the performance of any Collateral Assets other than the information set out in the Noteholder Reports which will be prepared on each Business Day or as otherwise specified in the applicable Final Terms. The Collateral Agent will make the Noteholder Reports available to the Noteholders on an internal secure website: AccessEdge.

No submission to clearance procedures of the *Autorité des marchés financiers*

This Base Prospectus prepared in connection with the Notes has not been submitted to the clearance procedures of the *Autorité des marchés financiers*.

ANNEX A

FORM OF GUARANTEE

Morgan Stanley

1585 BROADWAY
NEW YORK, NY 10036-8293

[DATE]

To: BNY Mellon Corporate Trustee Services Limited
One Canada Square
London E14 5AL
U.K. (the “Trustee”, which expression shall include its successors and assigns)

Ladies and Gentlemen:

In consideration of that certain [DESCRIBE NOTE SERIES] dated as of [DATE] (the “Notes”) issued by Morgan Stanley Secured Financing LLC (the “Issuer”), a company formed and existing under the laws of Delaware, pursuant to its U.S.\$5,000,000,000 Collateralised Funding Programme, Morgan Stanley, a Delaware corporation (hereinafter “Guarantor”), hereby irrevocably and unconditionally guarantees to the Trustee, who will hold the benefit of such guarantee upon trust for the holders of the Notes from time to time (the “Noteholders”) pursuant to the terms of the trust instrument relating to the Notes dated [●] between, *inter alios*, the Issuer and the Trustee (the “Trust Instrument”), with effect from the date of this Guarantee, the due and punctual payment of all amounts payable by the Issuer to the Noteholders under the Notes when the same shall become due and payable (whether upon the scheduled maturity ([DATE]), upon acceleration, upon demand, upon declaration of termination or otherwise), in accordance with the terms of the Notes following the occurrence of an Event of Default (as defined under the Notes) (the “Guaranteed Obligations”). Upon failure of the Issuer punctually to pay any of the Guaranteed Obligations following an Event of Default, and upon written demand by the Trustee, on behalf of the Noteholders, to the Guarantor at its address set forth in the signature block of this Guarantee (or to such other address as the Guarantor may specify in writing), the Guarantor agrees to pay or cause to be paid such amounts; provided that delay by the Trustee in giving such demand shall in no event affect the Guarantor’s obligations under this Guarantee.

The Guarantor’s obligations hereunder shall be irrevocable, absolute and unconditional and will not be discharged except by complete payment or discharge of the amounts payable under the Notes, irrespective of any claim as to the Notes’ validity, regularity or enforceability, the lack of authority of the Issuer to execute or deliver the Notes, as relevant; or any change in or amendment to the Notes; or any waiver or consent by the Trustee with respect to any provisions thereof; or the absence of any action to enforce the Notes or the recovery of any judgment against the Issuer or of any action to enforce a judgment against the Issuer under the Notes; or any similar circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor generally. Without limiting any of the foregoing, and without prejudice to the ability of the Guarantor’s obligations to be discharged by way of netting and set-off available, this Guarantee is a guarantee of payment when due and not of collection.

The Guarantor hereby waives diligence, presentment, demand on the Issuer for payment or otherwise (except as provided hereinabove), filing of claims, requirement of a prior proceeding against the Issuer

and protest or notice, except as provided for in the Notes, with respect to amounts payable by the Issuer. This is a continuing Guarantee and shall remain in full force and effect until the principal of and interest on the Notes shall have been paid in full. If at any time payment under the Notes is rescinded or must be otherwise restored or returned by the Trustee (or the Noteholders) upon the insolvency, bankruptcy, or reorganization of the Issuer or the Guarantor or otherwise, the Guarantor's obligations hereunder with respect to such payment shall be reinstated upon such restoration or return being made by the Trustee (or the Noteholders).

The Guarantor represents to the Trustee, and the Trustee shall hold the benefit of such representations upon trust on behalf of the Noteholders, as of the date hereof that:

- (1) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guarantee and to perform the provisions of this Guarantee on its part to be performed;
- (2) its execution, delivery and performance of this Guarantee have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
- (3) all consents, authorizations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
- (4) this Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

This Guarantee shall not be valid or become obligatory for any purpose with respect to a Note until such Note has been authenticated pursuant to the Trust Instrument.

By accepting this Guarantee, the Trustee agrees that the Guarantor shall be subrogated to all rights of the Trustee against the Issuer in respect of any amounts paid by the Guarantor pursuant to this Guarantee, provided that the Guarantor shall be entitled to enforce or to receive any payment arising out of or based upon such right of subrogation only to the extent that it has paid all amounts payable by it under this Guarantee.

This Guarantee shall be governed by and construed in accordance with the laws of the State of New York. All capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Trust Instrument.

MORGAN STANLEY

By: _____

Name:

Title:

Address: 1585 Broadway
New York, NY 10036

ANNEX B

FORM OF COLLATERAL TRANSFER AGREEMENT

**COLLATERAL TRANSFER TERMS MODULE
MARCH 2012 EDITION**

This Collateral Transfer Terms Module sets out the collateral transfer provisions relating to Notes constituted and secured by the Trust Instrument in which it is specified that this Collateral Transfer Terms Module is incorporated. The terms of this Collateral Transfer Terms Module may be modified or supplemented by the Trust Instrument. Upon the execution of the Trust Instrument by the parties thereto described as parties to the Collateral Transfer Agreement, such parties will be deemed to have entered into a Collateral Transfer Agreement in respect of the relevant Series on the terms set out below, as modified and/or supplemented by the Trust Instrument in respect of such Series.

1. Definitions

Capitalised terms used but not defined herein have the meanings given thereto in the terms and conditions of the Notes (the **Conditions**). In addition, in this Collateral Transfer Terms Module, the following terms have the following meanings:

Act of Insolvency shall occur with respect to a Party upon:

- (a) its making a general assignment for the benefit of, entering into a reorganisation, arrangement, or composition with creditors; or
- (b) its admitting in writing that it is unable to pay its debts as they become due; or
- (c) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver, judicial factor or liquidator or analogous officer of it or any material part of its property; or
- (d) the presentation or filing of a petition or application, or the filing of documents with a court or any registrar, in respect of it in any court or before any agency alleging or for the bankruptcy, winding-up or insolvency of such Party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition, application or filing (except in the case of a petition for winding-up or any analogous proceeding, in respect of which no such 30 day period shall apply) not having been stayed or dismissed within 30 days of its filing; or
- (e) the appointment of a receiver, administrator, liquidator, judicial factor or trustee or analogous officer of such Party or over all or any material part of the property of such Party; or
- (f) the convening of any meeting of its creditors for the purposes of considering a voluntary arrangement as referred to in section 3 of the Insolvency Act 1986 (or any analogous proceeding);

Additional Eligibility Criteria, in respect of a Series, the additional eligibility criteria specified in the applicable Final Terms related to such Series.

Asset Trust, the meaning given in the Declaration of Trust;

Assigned Amount means that amount and percentage interest specified in the Collateral Assets Report of the relevant Collateral Asset to be assigned to the Assignee by the Collateral Transfer Agreement, or if no such amount or percentage is specified in the relevant Collateral Assets Report, 100 per cent. of such Collateral Asset;

Assigned Interest means all of the rights and benefits under and in respect of a Collateral Asset which correspond to the Assigned Amount sold and assigned by the Assignor to the Assignee pursuant to the applicable Collateral Transfer Agreement (including, without limitation, the rights and benefits of the Assignor under and in respect of any guarantee or other assurance against loss given by any guarantor, any other security and any amounts owing to the Assignor under the Collateral Asset);

Assumed Obligations means all of the Assignor's obligations under a Collateral Asset which correspond to the Assigned Interest;

Beneficiary, the meaning given in the Declaration of Trust;

Collateral Asset, any obligation which satisfies the Eligibility Criteria and, in each case, shall include any Related Security in respect thereof.

Collateral Assets Report, the report substantially in the form of the Annex hereto;

Collateral Assets Report Date, the Business Day on which a Collateral Assets Report is delivered to the Issuer and the Collateral Agent;

Declaration of Trust, the declaration of trust between the Parties dated on or about the date of this Agreement;

Defaulting Party, the meaning specified in sub-paragraph 11(a);

Default Market Value, the value of the Issuer's interest in the Collateral Assets, as determined by the non-Defaulting Party (or the Note Trustee) in accordance with sub-paragraph 11(c)(i);

Default Notice, a written notice served by the non-Defaulting Party (or the Note Trustee) on the Defaulting Party under paragraph 11 stating that an event shall be treated as an Event of Default for the purposes of this Agreement;

Equivalent Assets, assets equivalent to the relevant Collateral Assets as determined by the Issuer. If and to the extent that such Collateral Assets have been redeemed, the expression shall mean a sum of money equivalent to the proceeds of the redemption. For the avoidance of doubt, an asset must have the same obligor and be of the same credit quality as the relevant Collateral Asset to be considered "equivalent" to such Collateral Asset;

Event of Default, the meaning specified in sub-paragraph 11(a);

Income, with respect to any Collateral Asset at any time, all amounts of principal, interest, dividends or other distributions thereon, including amounts in respect of interest on Collateral Assets that are cash deposited in the Series Account;

LIBOR, in relation to any sum in any currency, the one month London Inter Bank Offered Rate in respect of that currency as quoted on Reuters page LIBOR01 (or such other page as may replace Reuters page LIBOR01) as of 11.00a.m. London time, on the date on which it is to be determined;

Margin Ratio, the percentage specified in the applicable Final Terms;

Margin Transfer, any, or any combination of the, transfer and retransfer of Collateral Assets or Equivalent Assets pursuant to paragraph 5;

Margin Transfer Threshold means the amount specified in the applicable Final Terms, such an amount to be no greater than U.S. \$100.000 or its equivalent in another currency;

Market Value, the value in respect of a Collateral Asset or Equivalent Asset as determined by the applicable Seller acting in good faith and a commercially reasonable manner pursuant to and consistent with the methodology utilised by such Sellers to mark such Collateral Asset and Equivalent Asset for their own books and records or, if specified in the applicable Final Terms, by reference to third party quotations;

Master Participation Agreement, a master participation agreement in respect of the relevant Series between a Seller and the Issuer dated the Issue Date or the relevant Collateral Assets Report Date, as applicable;

Master Participation Terms Module means the Master Participation Terms Module April 2010 Edition;

Material Adverse Effect, in relation to a Party, a material adverse effect on the ability of that Party to perform its obligations under the Transaction Documents or on the assets, financial condition or business of that Party taken as a whole;

Morgan Stanley Internal Identifier Code, the internal code used by Morgan Stanley to identify the exact Collateral Asset on its data systems;

Net Exposure, the meaning specified in sub-paragraph 5(b);

non-Defaulting Party, the meaning specified in sub-paragraph 11(a);

Note Event of Default, an event of default as defined in the terms and conditions of the Notes;

Obligor, the underlying obligor in respect of a Collateral Asset and, in respect of Tagged Derivatives, the relevant counterparty in respect of such Tagged Derivatives;

Note Trustee, BNY Mellon Corporate Trustee Services Limited and its successors and assigns;

Participation, the meaning given in the relevant Master Participation Agreement;

Parties, the Issuer and the Sellers;

Payee, the meaning specified in sub-paragraph 6(b);

Payer, the meaning specified in sub-paragraph 6(b);

Proceeds, in respect of a Tagged Derivative, the product of (a) the Tagged Derivatives Proportion and (b) cash amounts received by the relevant Seller in respect of termination of such Tagged Derivative, provided such amounts are received after the occurrence of a Trigger Event and while such Trigger Event is subsisting;

Purchase Date, in relation to the relevant Series, the Issue Date;

Purchase Price, in relation to the relevant Series, the product of the Issue Price and the Outstanding Principal Amount of the Notes on the Issue Date;

Repurchase Date, the earlier of (i) the Maturity Date and (ii) the Early Redemption Date, Optional Put Redemption Date or Optional Call Redemption Date, if the Notes are redeemed in full on such date;

Repurchase Price, in respect of a determination of "Transaction Exposure" on any Business Day, the Outstanding Principal Amount on such Business Day and in all other circumstances, the Final Redemption Amount;

Secured Obligations,

- (a) all present and future obligations of the relevant Seller under this Agreement;
- (b) all amounts owed under any modifications, renewals or extensions of any of the foregoing obligations; and
- (c) any of the foregoing that arises after the filing of a petition by or against the relevant Seller under the US Bankruptcy Code, even if the obligations do not accrue because of the automatic stay under US Bankruptcy Code § 362 or otherwise.

Security Interest, any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having a similar effect;

Seller, each Seller specified in the applicable Trust Instrument;

Sellers' Representative, means Morgan Stanley & Co. International plc.;

Spot Rate, where an amount in one currency is to be converted into a second currency on any date, unless the parties otherwise agree, the spot rate of exchange quoted on Bloomberg page "BTMM" for the sale of such second currency against a purchase of such first currency;

Tagged Derivative, each ISDA Master Agreement and all derivative transactions thereunder between the relevant Seller and a third party counterparty that is tagged in the internal records of the relevant Seller and identified in a Collateral Assets Report by its Morgan Stanley Internal Identifier Code, the Proceeds in respect of which form part of the Collateral Assets;

Tagged Derivatives Proportion means, in respect of a Tagged Derivative, the percentage specified in the applicable Collateral Assets Report in respect of such Tagged Derivative and, if no percentage is specified in the applicable Collateral Assets Report, 100 per cent.;

Tax, any taxes or duties of whatsoever nature imposed, levied, collected, withheld or assessed by any authority having power to tax (including any related penalty or interest);

Tax Credit, a credit against any Tax or any relief or remission for Tax (or its repayment);

Tax Deduction, a deduction or withholding for or on account of Tax from a payment under this Agreement;

Tax Payment, a payment made by the Payer to the Payee in any way related to a Tax Deduction or under any indemnity given by the Payer to the Payee in respect of Tax under this Agreement;

Term, with respect to any Series, the interval of time commencing with the Purchase Date and ending with the Repurchase Date;

Transaction Exposure, on any Business Day during the period from the Purchase Date to the Repurchase Date, the difference between (i) the Repurchase Price at such time multiplied by the applicable Margin Ratio and (ii) the aggregate Market Value of the Collateral Assets on such Business Day. If (i) is greater than (ii), the Issuer has a Transaction Exposure equal to that excess. If (ii) is greater than (i), the Sellers have a Transaction Exposure equal to that excess;

Transfer Agreement, this Agreement, the Declaration of Trust (if any) and the Master Participation Agreement (if any);

Trigger Event, the occurrence of (i) a Note Event of Default in respect of the Series or (ii) an Act of Insolvency in respect of a Seller;

Trust Assets, the meaning given in the Declaration of Trust;

UCC, the Uniform Commercial Code as in effect from time to time in the State of New York;

VAT, value added tax as provided for in the Value Added Tax Act 1994 or any other Tax of a similar nature whether of the UK or elsewhere;

except in paragraphs 16(b)(i) and 19, references in this Agreement to "**written**" communications and communications "**in writing**" include communications made through any electronic system agreed between the parties which is capable of reproducing such communication in hard copy form.

2. Initiation; Conditions Precedent

- (a) The Collateral Assets to be transferred to or acquired by the Issuer pursuant to this Agreement and the method of such transfer or acquisition shall be specified in a duly completed Collateral Assets Report delivered by the Sellers to the Issuer and the Collateral Agent on the Issue Date.
- (b) The Collateral Assets Report shall be substantially in the form set out in the Annex to this Agreement or as otherwise agreed by the Seller and the Issuer and notified to the Note Trustee.

(c) The term "transfer" when used in this Agreement in respect of the obligation of the Sellers to transfer Collateral Assets to the Issuer on the Purchase Date or any Collateral Assets Report Date shall be construed as meaning:

- (i) in respect of Trust Assets, the acquisition by the Issuer of the beneficial interest in the relevant Collateral Assets pursuant to the Declaration of Trust (for the avoidance of doubt, the Asset Trust in respect of the Proceeds in respect of Tagged Derivatives shall be declared over such Proceeds once received by the Sellers and shall not be declared over the Tagged Derivatives themselves);
- (ii) in respect of Collateral Assets to be transferred by way of a Participation, the granting of a participation therein in accordance with sub-paragraph 3(c);
- (iii) in respect of Collateral Assets to be transferred by way of an Assignment, the assignment by the Seller of its rights and obligations in such Collateral Asset in accordance with sub-paragraph 3(b); and
- (iv) in respect of Collateral Assets that are cash, the deposit of such cash into the relevant Series Account by the Sellers,

and the term "transfer" when used in this Agreement in respect of the obligation of the Issuer to transfer Collateral Assets or Equivalent Assets to the Sellers on the Repurchase Date or any Collateral Assets Report Date shall be construed as meaning:

- (i) in respect of Trust Assets, the relinquishing by the Issuer of its interest in the relevant Asset Trusts (pursuant to the terms of the Declaration of Trust) and the reacquisition by the relevant Seller(s) of the beneficial interest in the relevant Trust Assets;
- (ii) in respect of Collateral Assets the subject of a grant of a Participation, the termination of such Participation;
- (iii) in respect of Collateral Assets the subject of an Assignment, the reassignment of such Collateral Assets to the relevant Seller; and
- (iv) in respect of Collateral Assets that are cash, the transfer of such cash from the Series Account to the relevant account as designated by the Sellers,

or, in each case, the transfer of Equivalent Assets.

(d) The obligations of the Issuer to enter into this Agreement are subject to the conditions precedent that on the Purchase Date in respect of the relevant Series:

- (i) the Issuer issues the Notes on the Issue Date in respect of the relevant Series;
- (ii) the Transaction Documents having been executed and delivered by the parties thereto on or before the Issue Date in respect of the relevant Series;
- (iii) the representations in paragraph 9 are correct in all material respects by reference to the facts then subsisting; and

- (iv) no Event of Default is outstanding or would result from the entering into and performance by the Sellers of their obligations under the Transaction Documents where a Seller is the Defaulting Party.
- (e) The obligations of the Sellers under this Agreement are several. Failure by a Seller to perform its obligations under this Agreement does not affect the obligations of any other Seller under this Agreement. No Seller is responsible for the obligations of any other Seller under this Agreement.
- (f) The entry into of the Trust Instrument in respect of the relevant Series by the Issuer and the Sellers shall constitute a single collateral transfer transaction in respect of the relevant Series.

3. Transfer Agreements; Payments; Termination

- (a) On the Purchase Date in respect of the relevant Series, each Seller in respect of those Collateral Assets the beneficial interest in which is to be acquired by the Issuer pursuant to a Declaration of Trust (as specified in the Collateral Assets Report) shall ensure that the beneficial interest in such Collateral Assets is held by such Seller as trustee in accordance with the Declaration of Trust, against and simultaneously with the payment of the Purchase Price by the Issuer.
- (b) On the Purchase Date in respect of the relevant Series, MSSF as the Seller in respect of each Collateral Asset which is an English law sub-participation of a European corporate loan between MSBIL and MSSF and which is specified in the Collateral Assets Report as being transferred by way of assignment (an **Assignor**) hereby irrevocably sells and assigns to the Issuer (the **Assignee**), and the Assignee hereby irrevocably purchases and accepts the assignment of the Assigned Interest and assumes and performs all the Assumed Obligations arising on or after the Purchase Date or the Collateral Assets Report Date, as applicable. Each such sale and assignment (each, an **Assignment**) is without recourse to the Assignor and, except as expressly provided in this Collateral Transfer Agreement, without representation or warranty by the Assignor.
- (c) On the Purchase Date in respect of the relevant Series, each Seller in respect of those Collateral Assets the interest in which is to be acquired by the Issuer pursuant to a Master Participation Agreement as specified in the relevant Collateral Assets Report, shall grant a participation (a **Participation**) to the Issuer in such Collateral Assets on the terms set out in the Master Participation Terms Module as incorporated into and modified by the relevant Trust Instrument for the Series (each such agreement in respect of a Collateral Asset, a **Master Participation Agreement**) and which the relevant Seller shall deliver to the Issuer and the Collateral Agent in respect of each such Collateral Asset on or prior to the Purchase Date, against the payment of the Purchase Price by the Issuer.
- (d) On the Repurchase Date, the Sellers shall pay to the Issuer the Repurchase Price and subject, in each case, to (f) below the Issuer shall transfer the Collateral Assets to the Sellers.
- (e) If the interests in Collateral Assets the subject of an Assignment are to be transferred to the Sellers by the Issuer on any Collateral Assets Report Date or on the Repurchase Date, the Issuer shall reassign any Assigned Interest to the relevant Seller and the relevant Seller shall accept the reassignment of such Assigned Interest and the parties hereby agree that such assignment shall occur on the relevant Collateral Assets Report Date or on the Repurchase Date, as applicable.

- (f) The Issuer may, but shall not be obliged to, elect to transfer Equivalent Assets to the Sellers instead of transferring interests in Collateral Assets pursuant to (e) above. In the event that the Issuer so determines, the Issuer shall notify the Sellers and the Collateral Agent of (i) the Equivalent Assets it is to transfer and it shall transfer such Equivalent Assets to the Sellers on the Repurchase Date against payment of the Repurchase Price by the Sellers and (ii) the Collateral Assets, the interests in which shall not be transferred on the Repurchase Date and, notwithstanding anything to the contrary in this Agreement, the interests in such Collateral Assets (the **Remaining Collateral Assets**) shall remain with the Issuer.
- (g) The Parties agree that any cash standing to the credit of the relevant Seller Derivatives Account may not be withdrawn other than in order to transfer such amounts to the Issuer or the Trustee to be deposited into the relevant Series Account and applied in accordance with the Priority of Payments.
- (h) If a Collateral Assets Report specifies an amount of cash as a Collateral Asset which is less than the amount of cash forming part of the Collateral Assets immediately prior to the applicable Collateral Assets Report Date, the Issuer shall on such Collateral Assets Report Date procure that the absolute value of the difference in such amounts (the **Returned Cash Collateral**) shall be transferred from the Series Account to the nominated account of the Sellers. For the avoidance of doubt, such Returned Cash Collateral shall not, as of such Collateral Assets Report Date, form part of the Collateral Assets.

4. Periodic Payments

- (a) Prior to the service of a Default Notice on the Sellers, the Issuer shall, on the Business Day immediately following the date it receives any Income (whether received directly from the relevant Obligor or from the Seller pursuant to the relevant Declaration of Trust or Participation), pay to such Seller an amount equal to (and in the same currency as) such Income.
- (b) Prior to the service of a Default Notice on the Issuer, the Sellers shall pay to the Issuer each Interest Amount on the relevant Interest Payment Date.

5. Margin Maintenance

- (a) On each Business Day, the Sellers will determine and notify the Issuer and the Collateral Agent of the Market Value of the Collateral Assets and any Net Exposure. If on any Business Day either party has a Net Exposure in respect of the other party the other party shall make a Margin Transfer to it of an aggregate amount or value at least equal to that Net Exposure.
- (b) For the purposes of this Agreement a party has a Net Exposure in respect of the other party if the first party's Transaction Exposure is positive and is equal to or greater than the Margin Transfer Threshold. For this purpose any amounts not denominated in the Currency of Issue shall be converted into the Currency of Issue at the Spot Rate prevailing at the relevant time.
- (c) Where the Issuer or the Sellers become obliged under sub-paragraph (a) above to make a Margin Transfer, the Sellers will deliver or procure delivery of a Collateral Assets Report to the Issuer and the Collateral Agent by 8 p.m. (New York time) on the Business Day on which such obligation arises, which shall result in new Collateral Assets being added in respect of such Series (if the Issuer has a Net Exposure to the Sellers) or Collateral Assets being transferred to the Sellers by the Issuer (if the Sellers have a Net Exposure to the Issuer), in

each case, in an amount which would result in such Margin Transfer being effected. The Issuer shall not be deemed to have failed to effect a Margin Transfer as may be required under this Agreement where such failure is caused by a failure or delay by a Seller in delivering or procuring delivery of an up-to-date Collateral Assets Report.

- (d) Upon the Sellers notifying the Issuer that the Issuer must make a Margin Transfer to the Sellers, the Issuer may, but shall not be obliged to, transfer Equivalent Assets to the Sellers in place of transferring Collateral Assets to the Sellers, provided that such transfer of Equivalent Assets results in the required Margin Transfer within the deadline contemplated in sub-paragraph (c) above. For the avoidance of doubt, the Issuer shall not be obliged to transfer the Collateral Assets which have been replaced by Equivalent Assets pursuant to this sub-paragraph on the Repurchase Date.
- (e) In the event that the Sellers have a Net Exposure to the Issuer on any Business Day, the Margin Transfer effected pursuant to sub-paragraph (a) above shall not be greater than such Net Exposure and must not result in the Issuer having a Net Exposure to the Sellers on the relevant Collateral Assets Report Date.

6. Payment and Transfer

- (a) Unless otherwise agreed, all money paid under the Transaction Documents shall be in immediately available freely convertible funds of the relevant currency.
- (b) Unless otherwise agreed, all money payable by one Party (the **Payer**) to the other (the **Payee**) in respect of any Transaction Document shall be paid free and clear of, and without withholding or deduction for, Tax, unless the withholding or deduction of such Tax is required by law. In that event, unless otherwise agreed, (i) where a Seller is the Payer, such Seller shall pay such additional amounts as will result in the net amounts receivable by the Issuer (after taking account of such withholding or deduction) being equal to such amounts as would have been received by it had no such taxes or duties been required to be withheld or deducted and (ii) where the Issuer is the Payer, the Issuer shall not be obliged to make any such additional payments and all payments by the Issuer will be made subject to such withholding or deduction.
- (c) Each Seller shall pay to the Issuer an amount equal to any loss or liability or cost which the Issuer (in its absolute discretion) determines will be or has been suffered (directly or indirectly) by it for or on account of Tax in relation to a payment received or receivable (or any payment deemed to be received or receivable) from such Seller under the Transaction Documents, other than Tax imposed on the Issuer under the laws of (i) the jurisdiction in which the Issuer is incorporated or (ii) any other jurisdiction (or jurisdictions) in which the Issuer is treated as resident for Tax purposes, or (iii) any other jurisdiction in which the Issuer carries on a business to which the payment is attributable, if that Tax is imposed on or calculated by reference to the net income received or receivable by the Issuer. For the purposes of this sub-paragraph (c), any payment deemed to be received or receivable, including any amount treated as income but not actually received by the Issuer, such as a Tax Deduction referred to in sub-paragraph (b), will not be treated as net income received or receivable.
- (d) Sub-paragraph (c) above does not apply to the extent a loss, liability or cost:
 - (i) is compensated for by an increased payment under sub-paragraph (b); or

- (ii) would have been compensated for by an increased payment under sub-paragraph (c) but was not compensated solely because one of the exclusions in that paragraph applied.
- (e) If the Issuer makes, or intends to make, a claim under sub-paragraph (c) above, it must promptly notify the relevant Seller of the event which will give, or has given, rise to the claim.
- (f) If a Seller as Payer makes a Tax Payment and the Issuer (in its absolute discretion) determines that:
 - (i) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and
 - (ii) it has obtained, used and retained that Tax Credit,the Issuer must pay an amount to such Seller which the Issuer determines (in its absolute discretion) will leave it (after that payment) in the same after-Tax position as it would have been if the Tax Payment had not been required to be made by the Seller.
- (g) The Sellers must pay to the Issuer such an amount as is sufficient to compensate the Issuer on an after-Tax basis for any cost, loss or liability that the Issuer incurs in relation to all stamp duty, stamp duty land tax, registration or other similar Tax payable in connection with the entry into, performance or enforcement of any Transaction Document.
- (h) All amounts set out, or expressed to be payable under a Transaction Document by a Seller to the Issuer which (in whole or in part) constitute the consideration for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to sub-paragraph (i) below, if VAT is chargeable on any supply made by the Issuer to the Seller under a Transaction Document, such Seller must pay to the Issuer (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT (and the Issuer must promptly provide an appropriate VAT invoice to such Seller). Any sum (or other consideration) payable (or provided) by the Issuer to a Seller pursuant to this Agreement shall be deemed to be inclusive of any VAT.
- (i) Where a Transaction Document requires a Seller to reimburse the Issuer for any costs or expenses, that obligation shall only extend to VAT incurred by the Issuer in respect of the costs or expenses to the extent that such Seller reasonably determines that neither it nor any other member of any group of which it is a member for VAT purposes is entitled to credit or repayment from the relevant tax authority in respect of the VAT.
- (j) The parties shall execute and deliver all necessary documents and take all necessary steps to procure that the beneficial interest or, in the case of a Collateral Asset the interest in which is transferred by way of an Assignment or a Participation, all right, title and/or interest, as applicable, in the Collateral Assets shall subsist in the Party in whose favour the relevant Declaration of Trust, Participation or Assignment has been made or to whom it has been reassigned or released or terminated, in each case in accordance with this Agreement, free from all Security Interests, other than those Security Interests created pursuant to the Transaction Documents.

- (k) Notwithstanding the use of expressions such as "*Repurchase Date*", "*Repurchase Price*", "*Margin*", "*Margin Ratio*" and "*substitution*", which are used to reflect terminology used in the market for transactions of the kind provided for in this Agreement, all right, title and interest in and to (i) those Collateral Assets in respect of which a trust is declared under the Declaration of Trust and reassigned or released in accordance with this Agreement; (ii) those Collateral Assets in respect of which a Participation is granted under a Master Participation Agreement and terminated in accordance with this Agreement; (iii) those Collateral Assets which are assigned or reassigned in accordance with this Agreement and (iv) all money paid under this Agreement, shall subsist in or, as the case may be, pass to the relevant transferee upon the relevant declaration, grant of such Participation or Assignment, reassignment, release, termination of such Participation or payment being made.
- (l) Subject to paragraph 11, all amounts in the same currency payable by a Party to another Party under this Agreement on the same date shall be combined in a single calculation of a net sum payable by one Party to another, and the obligation to pay that sum shall be the only obligation of such Parties in respect of those amounts.
- (m) If an amount of cash is specified as a Collateral Asset in a Collateral Assets Report, such cash shall be deposited by the applicable Seller in the Series Account.
- (n) Each Seller shall distribute any amounts actually received by such Seller in respect of any amount of principal, interest, fees, costs or other amounts owing under a Collateral Asset in accordance with the Declaration of Trust and any Participation.
- (o) Each Seller acknowledges and agrees that upon realisation of, or enforcement with respect to, the security constituted by or pursuant to the Security Documents in respect of a Series the Note Trustee shall make all payments under the Transfer Agreements in accordance with the Priority of Payments set out in Condition 7 (*Application of Proceeds*) of the Notes.
- (p) Time shall be of the essence in this Agreement.

7. Substitution

- (a) In respect of each Series, provided that an Event of Default under the Collateral Transfer Agreement is not subsisting, the Sellers may on any Business Day prior to the Repurchase Date, and each Seller shall on any Business Day on which any Collateral Assets do not satisfy the Eligibility Criteria, in each case, by 8 p.m. (New York time), vary the Collateral Assets under this Agreement by the transfer by the Issuer to the Sellers of Collateral Assets or Equivalent Assets (or the relevant assets which no longer satisfy the Eligibility Criteria) in exchange for the transfer by the Sellers to the Issuer of other Collateral Assets (having a Market Value at the date of the variation at least equal to the Market Value of the Collateral Assets or Equivalent Assets (or the relevant assets which no longer satisfy the Eligibility Criteria)). Such variation shall be achieved by the relevant Seller(s) delivering or procuring delivery of a Collateral Assets Report to the Issuer and the Collateral Agent specifying which Collateral Assets shall be included as Collateral Assets in respect of that Series as of such Business Day (each, a **Collateral Assets Report Date**) and the Collateral Assets specified in such Collateral Assets Report shall be the Collateral Assets in respect of such Series, and any Collateral Asset that was a Collateral Asset in respect of the Series prior to such Collateral Assets Report Date will automatically and simultaneously no longer form part of the

Collateral Assets in respect of such Series and shall be deemed to be transferred to the Sellers in accordance with the terms of this Agreement and the relevant Transfer Agreement.

- (b) A substitution in accordance with sub-paragraph (a) above will be subject to (i) neither the Issuer nor the Sellers having a Net Exposure to the other party on the relevant Collateral Assets Report Date and (ii) the Collateral Assets set out in the relevant Collateral Assets Report satisfying the Eligibility Criteria as of such Collateral Assets Report Date.
- (c) If upon receipt of a Collateral Assets Report pursuant to the terms of this Agreement, the Collateral Agent determines that the Collateral Assets specified in such Collateral Assets Report do not satisfy the Eligibility Criteria the Collateral Agent shall notify the Sellers and the Issuer pursuant to the Master Collateral Verification Agreement, and the Sellers shall on the date of such notification, deliver another Collateral Assets Report to the Issuer and the Collateral Agent.

8. Issuer Representations

The Issuer represents and warrants to the Sellers on the date of this Agreement that:

- (a) it is a limited liability corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- (b) it has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of the Transaction Documents and of the transactions contemplated by the Transaction Documents;
- (c) the entry into and performance by it of the Transaction Documents and of the transactions contemplated by the Transaction Documents do not conflict with:
 - (i) any law or regulation applicable to it;
 - (ii) its constitutional documents; or
 - (iii) any agreement or instrument which is binding upon it or its assets to an extent or in a manner which has or is reasonably likely to have a Material Adverse Effect;
- (d) all authorisations required by it in connection with the entry into, performance, validity and enforceability of the Transaction Documents, and of the Transactions contemplated by the Transaction Documents, have been obtained or effected (as appropriate) and are in full force and effect;
- (e) it will engage in the Transaction Documents and the transactions contemplated by the Transaction Documents as principal;
- (f) in connection with this Agreement:
 - (i) unless there is a written agreement with the other party to the contrary, it is not relying on any advice (whether written or oral) of the other party, other than the representations expressly set out in this Agreement;

- (ii) it has made and will make its own decisions regarding the entering into of the Transaction Documents based upon its own judgment and upon advice from such professional advisers as it has deemed it necessary to consult;
 - (iii) it understands the terms, conditions and risks of this Agreement and is willing to assume (financially and otherwise) those risks; and
- (g) at the time of transfer to the other party of any Collateral Assets or Equivalent Assets it will have the full and unqualified right to make such transfer and that upon such transfer of Collateral Assets or Equivalent Assets the other party will receive all right, title and interest in and to those Collateral Assets or Equivalent Assets free of any lien, claim, charge or encumbrance.

9. Seller Representations

Each Seller represents and warrants to the Issuer (i) (save in respect of sub-paragraphs (k) and (l) below) on the date of this Agreement and (ii) on each Purchase Date and each Collateral Assets Report Date:

- (a) it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- (b) it has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of, the Transaction Documents and the transactions contemplated by the Transaction Documents;
- (c) subject to all insolvency laws and any other general principles of law limiting its obligations, the Transaction Documents are its legally binding, valid and enforceable obligation;
- (d) the entry into and performance by it of the Transaction Documents and of the transactions contemplated by the Transaction Documents do not conflict with:
 - (i) any law or regulation applicable to it;
 - (ii) its constitutional documents; or
 - (iii) any agreement or instrument which is binding upon it or its assets to an extent or in a manner which has or is reasonably likely to have a Material Adverse Effect;
- (e) no Act of Insolvency has occurred in relation to it and it is able to pay its debts when they fall due;
- (f) no other Event of Default is outstanding or will result from the entry into of the Transaction Documents or of the performance of any transaction contemplated by the Transaction Documents;
- (g) no other event or circumstance is outstanding which constitutes a default under any document which is binding on it or any of its assets to an extent or in a manner which has or is reasonably likely to have a Material Adverse Effect;

- (h) all authorisations required by it in connection with the entry into, performance, validity and enforceability of the Transaction Documents and of the transactions contemplated by the Transaction Documents have been obtained or effected (as appropriate) and are in full force and effect;
- (i) no litigation, arbitration or administrative proceedings against it have been started or, to its knowledge, threatened, which are likely to be adversely determined and, if adversely determined, are reasonably likely to have a Material Adverse Effect;
- (j) (save where it is expressed to act as trustee under the Declaration of Trust) it will engage in the Transaction Documents and the transactions contemplated by the Transaction Documents as principal;
- (k) the Collateral Assets satisfy the Eligibility Criteria;
- (l) the information shown in the most recently delivered Collateral Assets Report is true, complete and accurate in all material respects as of the date that document was given;
- (m) in connection with this Agreement:
 - (i) unless there is a written agreement with the other party to the contrary, it is not relying on any advice (whether written or oral) of the other party, other than the representations expressly set out in this Agreement;
 - (ii) it has made and will make its own decisions regarding the entering into the Transaction Documents based upon its own judgment and upon advice from such professional advisers as it has deemed it necessary to consult;
 - (iii) it understands the terms, conditions and risks of this Agreement and is willing to assume (financially and otherwise) those risks; and
- (n) at the time of transfer to the other party of any Collateral Assets or Equivalent Assets it will have the full and unqualified right to make such transfer and that upon such transfer of Collateral Assets or Equivalent Assets the other party will receive all right, title and interest in and to those Collateral Assets or Equivalent Assets free of any lien, claim, charge or encumbrance, subject in the case of Trust Assets, to the terms of the relevant Declaration of Trust.

10. Undertakings

- (a) Each Seller shall supply to the Issuer, promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings against it which have been started or, to its knowledge, threatened, which are likely to be adversely determined and, if adversely determined, are reasonably likely to have a Material Adverse Effect.
- (b) Each Party shall ensure that its payment obligations under this Agreement at all times rank at least *pari passu* with all its other present and future unsecured payment obligations, except for obligations mandatorily preferred by law applying to companies generally.
- (c) Each Seller may not (otherwise than pursuant to a Transaction Document):

- (i) create or allow to exist any Security Interest on any Collateral Asset;
 - (ii) sell, transfer or otherwise dispose of any Collateral Asset;
 - (iii) enter into any sub-participation or other similar arrangement, or grant any interest to any person, in respect of any Collateral Asset; or
 - (iv) enter into any other preferential arrangement having a similar effect.
- (d) The Issuer may not (otherwise than pursuant to a Transaction Document):
- (i) create or allow to exist any Security Interest on its interest created under any Transfer Agreement; or
 - (ii) sell, transfer or otherwise dispose of its interest created under any Transfer Agreement,

save that this undertaking shall not bind the Issuer after it has served a Default Notice on a Seller in accordance with paragraph 11.

- (e) In respect of Trust Assets the Issuer (as Beneficiary) shall not terminate or purport to terminate the Asset Trust and, in particular, but without prejudice to the generality of the foregoing, the Issuer (as Beneficiary) shall not in reliance on its absolute beneficial interest in the Trust Assets call for the transfer to it or vesting in it of the legal title in or to all or any part of the Trust Assets.

11. Events of Default

- (a) If the event in sub paragraph (ii) below occurs in relation to the Issuer (which shall be the **Defaulting Party** and the applicable Seller, the **non-Defaulting Party**) or, if any of the events in any of the other sub-paragraphs below occurs in relation to any Party (the **Defaulting Party**, the other Party being the **non-Defaulting Party**) and the non-Defaulting Party (or the Note Trustee on its behalf) serves a Default Notice on the Defaulting Party (and each Seller and the Issuer hereby authorises the Note Trustee to serve a Default Notice on its behalf) (an **Event of Default**):
 - (i) an Act of Insolvency occurs with respect to any Party; or
 - (ii) a Note Event of Default occurs and is not remedied within any applicable grace period; or
 - (iii) a Party fails to perform its obligations under paragraph 3 or paragraph 5 or fails to pay any other amount due from it under this Agreement; or
 - (iv) a Party does not comply with any obligation under any Transaction Document (other than an obligation referred to in sub-paragraph (iii) above), unless the non-compliance is capable of remedy and is remedied within 30 days of such Party becoming aware of (or another Party giving it notice of) the non-compliance; or
 - (v) a representation or warranty made or deemed to be repeated by any Party in or pursuant to any Transaction Document or in any certificate or document delivered

under or in connection with any Transaction Document is incorrect or misleading in any material respect when made or deemed to be repeated, unless the circumstances giving rise to the misrepresentation or breach of warranty are capable of remedy and are remedied within 7 Business Days of the Defaulting Party becoming aware of the misrepresentation or breach of warranty; or

- (vi) it is or becomes unlawful for any Party to perform any of its obligations under any Transaction Document; or
- (vii) a Party repudiates this Agreement or any other Transaction Document or evidences an intention to repudiate this Agreement or any other Transaction Document,

then sub-paragraphs (b) to (f) below shall apply. For the avoidance of doubt, where a Default Notice is served by the Note Trustee after service of a Default Notice by a Seller or the Issuer, the Default Notice served by the Seller or Issuer shall be the valid and operative Default Notice for the purposes of this Agreement.

- (b) The Repurchase Date shall be deemed immediately to occur (and so that, where this sub-paragraph applies, performance of the respective obligations of each Seller with respect to the payment of the Repurchase Price, of the Issuer to transfer Collateral Assets or Equivalent Assets and all the parties' other obligations, shall be effected only in accordance with the provisions of sub-paragraphs (c) or (d) below).
- (c) (i) Unless sub-paragraph (d) below applies, the Default Market Value of the Issuer's interest in the Collateral Assets, and the Repurchase Prices and all other amounts payable by each Seller under the Transaction Documents as at the Repurchase Date, shall be established by the Issuer (or the Note Trustee if the Note Trustee served the Default Notice on the Issuer's behalf), if a Seller is the Defaulting Party and by the Sellers' Representative (or the Note Trustee if the Note Trustee served the Default Notice on the Seller's behalf), if the Issuer is the Defaulting Party, as soon as reasonably practicable following the Repurchase Date. Where a Default Notice has been served by a Seller or the Issuer, the Note Trustee may, but shall not be obliged to, determine the Default Market Value if either the Issuer or the Sellers' Representative, as applicable, has failed to determine such Default Market Value within 30 Business Days after the delivery or deemed delivery of the Default Notice. The Default Market Value of the Issuer's interest in the Collateral Assets shall be determined:
 - (A) on the basis of (wherever reasonably obtainable) bids made on an arm's length, commercial basis by reputable potential buyers, on the basis of the net sale proceeds which the non-Defaulting Party reasonably expects would be realized on a sale to a buyer (after deducting all costs, fees and expenses incurred in connection therewith);
 - (B) if the Issuer is the non-Defaulting Party and it notifies the Sellers in writing (which notice may be made prior to on or after any recovery), on the basis of an amount equal to any recoveries actually made by it in respect of its interests in the Collateral Assets (whether on disposal thereof, howsoever achieved, or by way of collection of amounts payable by the borrowers, issuers and other obligors thereunder, or by way of enforcement proceeds or by any other means whatsoever);

(C) if the non-Defaulting Party has endeavoured but been unable to recover amounts in relation to any such Collateral Assets (in the case of the Issuer) or to obtain quotations, or the non-Defaulting Party has determined that it would not be commercially reasonable to use such quotations which it has obtained pursuant to sub-paragraph (A) above, on such other fair value basis as the non-Defaulting Party (acting in a commercially reasonable manner and in good faith) determines; or

(D) where the Default Notice has been served by the Note Trustee or the Note Trustee is otherwise determining the Default Market Value as contemplated above, the Default Market Value of the Issuer's interest in the Collateral Assets shall be the fair market value of such Collateral Assets, as determined by the Note Trustee in good faith and in a commercially reasonable manner, taking into account such market valuation sources, bids, asset sales and recoveries and associated costs and expenses as the Note Trustee shall reasonably determine, in each case taking into account (without limitation) any trust arrangement or participation arrangement and any limitations on disposal of the Collateral Assets, any set-off rights and any other legal impediment affecting the Issuer's ability to sell the trust interest or the legal and beneficial title in Collateral Assets; and

- (ii) on the basis of the sums so established, an account shall be taken (as at the Repurchase Date) of the sums due from each Party to the other under this Agreement (on the basis that the Sellers' claim against the Issuer in respect of the transfer of its interest in the relevant Collateral Asset in accordance with the Transfer Agreements equals the Default Market Value of the Issuer's interest in the Collateral Assets) and the sums due from each of the Sellers shall be set off against the sums due from the Issuer to such Seller and only the balance of the account shall be payable (by the Party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be due and payable on the next following Business Day after it is notified to the Defaulting Party, provided, for the avoidance of doubt, that the Collateral Assets shall not be retransferred to the Sellers without the consent of the Note Trustee.
- (d) If the non-Defaulting Party or the Note Trustee on its behalf elects in writing not to determine the Default Market Value of the Issuer's interest in the Collateral Assets in accordance with sub-paragraph (c) above, the parties agree that the Issuer shall fully and finally discharge its obligation to account to the Sellers for the Default Market Value of the Issuer's interest in the Collateral Assets by, subject to the receipt of the consent of the Note Trustee, transferring to the Sellers all of the Collateral Assets or Equivalent Assets (and the Sellers agree to accept such Collateral Assets or Equivalent Assets) against payment of the Repurchase Price and all other amounts payable by the Sellers under the Transaction Documents. For the avoidance of doubt, the Sellers have no equity of redemption or other proprietary interest in any of the Collateral Assets.
- (e) Without limiting paragraph 12, interest under paragraph 11 shall accrue on all amounts due but unpaid by the Defaulting Party until that amount is discharged by way of set-off under sub-paragraph 11(c)(ii) at the rate set out in paragraph 12 or by transferring the Collateral Assets under sub-paragraph 11(d).
- (f) For the purposes of the calculations under sub-paragraphs (c) and (d) above, all sums not denominated in the Currency of Issue shall be converted into the Currency of Issue on the

relevant date at the Issuer's spot rate of exchange prevailing at the relevant time if the Issuer is the non-Defaulting Party or at the Sellers' Representative's spot rate of exchange prevailing at the relevant time if the Issuer is the Defaulting Party.

- (g) Without prejudice to paragraph 24, no Party may claim any sum by way of consequential loss or damage in the event of a failure by the other Party to perform any of its obligations under this Agreement.
- (h) Each Party shall immediately notify each other Party if an Event of Default, or an event which, upon the serving of a Default Notice, would be an Event of Default, occurs in relation to it.
- (i) The provisions of this Agreement constitute a complete statement of the remedies available to each party in respect of any Event of Default.
- (j) For the avoidance of doubt, the Note Trustee shall not be obliged to take any action under this Agreement unless it has received directions from the Noteholders acting by an Extraordinary Resolution and in any case then only if it shall be indemnified and/or secured and/or prefunded to its satisfaction in accordance with clause 10(A) of the Trust Terms Module as incorporated into and modified by the relevant Trust Instrument for the Series and, in the case of making any determination, following receipt of any advice that the Note Trustee may deem necessary in its absolute discretion.

12. Default interest

To the extent permitted by applicable law, if any sum of money payable under this Agreement is not paid when due, interest shall accrue on the unpaid sum as a separate debt at LIBOR on a 365 day basis, for the actual number of days during the period from and including the date on which payment was due to, but excluding, the date of payment.

13. Contractual Currency

- (a) All the payments made in respect of the Purchase Price or the Repurchase Price of any Transaction shall be made in the Currency of Issue. Notwithstanding the foregoing, the payee of any money may, at its option, accept tender thereof in any other currency, provided, however, that, to the extent permitted by applicable law, the obligation of the payer to pay such money will be discharged only to the extent of the amount in the Currency of Issue that such payee may, consistent with normal banking procedures, purchase with such other currency (after deduction of any premium and costs of exchange) for delivery within the customary delivery period for spot transactions in respect of the relevant currency.
- (b) If for any reason the amount in the Currency of Issue received by a party, including amounts received after conversion of any recovery under any judgment or order expressed in a currency other than the Currency of Issue, falls short of the amount in the Currency of Issue due and payable, the Party required to make the payment will, as a separate and independent obligation, to the extent permitted by applicable law, immediately transfer such additional amount in the Currency of Issue as may be necessary to compensate for the shortfall.
- (c) If for any reason the amount in the Currency of Issue received by a Party exceeds the amount of the Currency of Issue due and payable, the Party receiving the transfer will refund promptly the amount of such excess.

14. Security Interest

Although the Parties hereto intend that the transfers and acquisitions under this Agreement be sales and purchases and not loans, in the event any such transfers or acquisitions are deemed to be loans the relevant Seller shall be deemed to have charged to the Issuer as security for the Secured Obligations, and shall be deemed to have granted to the Issuer a security interest having priority over all other security interests in, all of the relevant Seller's right, title and interest in the relevant Collateral Assets with respect to the Series and all income thereon and other proceeds thereof. The Issuer hereby gives the relevant Seller authority to file a UCC financing statement in order to perfect the security interest and the Issuer shall make any necessary updates as may be required, and take any other steps necessary or desirable, to ensure that the Issuer has a valid and perfected security interest in the Collateral Asset granted to it hereunder under the laws of any applicable jurisdiction.

15. Tagged Derivatives Security Interest

- (a) As security for the Secured Obligations, each Seller incorporated in the United States of America which declares a trust over the Proceeds of Tagged Derivatives pursuant to the applicable Declaration of Trust, with full title guarantee, in favour of the Issuer assigns, by way of security, all of such Seller's Rights under the proportion of such Tagged Derivatives, the Proceeds of which are designated as Collateral Assets pursuant to this Agreement from time to time (the **Secured Tagged Derivatives**).
- (b) Each Seller mentioned in sub-paragraph (a) above:
 - (i) authorises the Issuer to prepare and file, at such Seller's expense, an initial financing statement describing the Secured Tagged Derivatives as of the date of this Agreement, as well as continuation statements and amendments in respect of those financing statements when necessary;
 - (ii) represents, warrants and agrees that this Agreement confers the security interest it purports to confer over the Secured Tagged Derivatives in favour of the Issuer, and, subject to the provisions of § 552 of the US Bankruptcy Code (as defined in the UCC), that security interest is not liable to avoidance on liquidation or bankruptcy, composition or any other similar insolvency proceedings;
 - (iii) agrees that the Issuer will have, with respect to the Secured Tagged Derivatives, in addition to the rights and remedies described in this Agreement, all of the rights and remedies available to a secured party under applicable law and under the UCC (whether or not the UCC applies to the affected Secured Tagged Derivatives and regardless of whether or not the UCC is the law of the jurisdiction where the rights or remedies are asserted) as if those rights and remedies were fully set forth in this Agreement; and
 - (iv) at any time and from time to time upon the request of the Issuer, such Seller will execute and deliver such further documents and instruments and do such other acts as the Issuer may reasonably request in order to effect fully the purposes of this Agreement, to create, perfect, maintain, and preserve such security interest in the Secured Tagged Derivatives in favour of the Issuer, to facilitate any sale, transfer or other disposition of Secured Tagged Derivatives and to make any sale, transfer or

other disposition of Secured Tagged Derivatives valid, binding, and in compliance with applicable law.

- (c) The security constituted pursuant to this paragraph 15 shall become enforceable following the occurrence of an Event of Default.
- (d) On delivery to the Issuer of a Collateral Assets Report the security constituted pursuant to this paragraph 15 shall be released over those Tagged Derivatives which were Secured Tagged Derivatives prior to the Collateral Assets Report Date but that are not included in such Collateral Assets Report and such Tagged Derivatives shall (to the extent applicable) be reassigned to the relevant Seller.

16. Notices and Other Communications

- (a) Any notice or other communication to be given under this Agreement:
 - (i) shall be in the English language, and except where expressly otherwise provided in this Agreement, shall be in writing;
 - (ii) may be given in any manner described below;
 - (iii) shall be sent to the Party to whom it is to be given at the address or number, or in accordance with the electronic messaging details, set out in sub paragraph (c) below.
- (b) Subject to sub-paragraph (d) below, any such notice or other communication shall be effective:
 - (i) if in writing and delivered in person or by courier, at the time when it is delivered;
 - (ii) if sent by facsimile transmission, at the time when the transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
 - (iii) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), at the time when that mail is delivered or its delivery is attempted; and
 - (iv) if sent by electronic messaging system, at the time that electronic message is received;

except that any notice or communication which is received, or delivery of which is attempted, after close of business on the date of receipt or attempted delivery or on a day which is not a day on which commercial banks are open for business in London shall be treated as given at the opening of business on the next following day which is such a day.

- (c) For the purposes of this Agreement:
 - (i) Address for notices and other communications for the Issuer:
Address: Morgan Stanley Secured Financing LLC

Corporation Trust Center
1209 Orange Street
Wilmington
Delaware 19801
U.S.A.

Attention: Edward Corral

Facsimile No: + 1 212 507 2886

Email: Edward.Corral@morganstanley.com

With a copy to:

Address: Morgan Stanley

1585 Broadway
New York, New York 10036
U.S.A.

Attention: Tom D'Antonio

Facsimile No: +1 212 507 4948

Email: Thomas.D'Antonio@morganstanley.com

(ii) Address for notices and other communications for each of the Sellers shall be as set out in the Trust Instrument for the relevant Series:

(iii) Address for notices and other communications for the Collateral Agent:

Address: The Bank of New York Mellon

One Wall Street – 4th Floor
New York, NY 10286
U.S.A.

Attention: John Morik, Vice President

Facsimile No: +1 212 635 4745

Email: John.Morik@bnymellon.com

(d) A Party may by notice to the other Parties change the address or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

17. Electronic Communications

Each communication under this Agreement may be made by email, fax or otherwise in writing. The Issuer and the Sellers accept that electronic methods of communication (fax,

email or other similar electronic methods) are not secure and The Bank of New York Mellon shall not incur any liability for receiving instructions or (upon the Issuer's or Seller's request) communicating or transmitting data to the Issuer and or Sellers via any such non-secure method, except where liability arises as a result of the negligence or wilful default of any such party.

18. Entire Agreement; Severability

Each provision and agreement herein shall be treated as separate from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

19. Non-assignability; Termination

- (a) Subject to sub paragraphs (b) and (c) below, no Party may assign, charge or otherwise deal with (including without limitation any dealing with any interest in or the creation of any interest in) its rights or obligations under this Agreement without the prior written consent of the other Party. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
- (b) Sub paragraph (a) above shall not preclude a Party from assigning, charging or otherwise dealing with all or any part of its interest in any sum payable to it under sub-paragraphs 11(c) or 11(d) above.
- (c) Sub-paragraph (a) above shall not preclude the Issuer from charging and assigning such interests pursuant to the Trust Deed or from assigning, charging or otherwise dealing with all or any part of its interest under the Transaction Documents following the service of a Default Notice on a Seller.
- (d) All remedies hereunder shall survive termination in respect of the termination of this Agreement.

20. No Waivers, etc.

No express or implied waiver of any Event of Default by a Party shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by any Party shall constitute a waiver of its right to exercise any other remedy hereunder. No modification or waiver of any provision of this Agreement and no consent by any Party to a departure here from shall be effective unless and until such modification, waiver or consent shall be in writing and duly executed by both of the parties hereto.

21. Waiver of Immunity

Each Party hereto hereby waives, to the fullest extent permitted by applicable law, all immunity (whether on the basis of sovereignty or otherwise) from jurisdiction, attachment (both before and after judgment) and execution to which it might otherwise be entitled in any action or proceeding in the Courts of England or of any other country or jurisdiction, relating in any way to this Agreement or any Transaction, and agrees that it will not raise, claim or cause to be pleaded any such immunity at or in respect of any such action or proceeding.

22. Recording

The parties agree that each may electronically record all telephone conversations between them.

23. Third Party Rights

Other than the Note Trustee, no person shall have any right to enforce any provision of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

24. Expenses

- (a) Each Seller must pay to the Issuer the amount of all costs and expenses (including legal fees, stamp duty and value added tax) incurred by it in connection with the negotiation, preparation, printing, execution, amendment or waiver of the Transaction Documents and the entry into and performance of this Agreement, as well as all costs and expenses (including legal fees, stamp duty and value added tax) incurred by it in connection with:
- (i) the enforcement of, or the preservation of any rights under, any Transaction Documents; or
 - (ii) any proceedings instituted by or against the Issuer as a consequence of it entering into any Transaction Document.
- (b) The costs and expenses payable under sub-paragraph (a) above shall include (without limitation):
- (i) legal and other professional expenses incurred by or on behalf of the Issuer;
 - (ii) stamp duty, value added tax, notary fees, registration or filing fees and any other costs, fees and expenses payable upon a transfer of the Issuer's interest under the Transfer Agreements or of the Collateral Assets;
 - (iii) any other costs and expenses incurred on or in connection with a transfer of the Issuer's interest under the Transfer Agreements or of the Collateral Assets, including costs of marketing and/or preparing due diligence reports in respect of any such interest or assets or otherwise realising its interest in the Collateral Assets.
- (c) The Sellers shall, within three Business Days of demand, reimburse the Issuer for any cost, loss or liability incurred by the Issuer as a result of:
- (i) the occurrence of any Event of Default with respect to that Seller; or
 - (ii) a failure by that Seller to pay any amount due under a Transaction Document on its due date.
- (d) The Sellers undertake to pay the Issuer on demand an amount equal to any liability, damages, loss, cost or expense (including legal fees, costs and expenses) incurred by or awarded against the Issuer or any of its directors, officers, employees or agents (each a **Relevant Party**) arising out of, in connection with or based on any actual or potential action, claim, suit, investigation or proceeding arising out of, in connection with or based on:

- (i) the Transaction Documents;
- (ii) the use of proceeds of any Purchase Price; or
- (iii) the realisation or attempted realisation of its interest in any Collateral Asset,

except to the extent such liability, damages, loss, cost or expense incurred or awarded results from any breach by the Issuer of a Transaction Document which is finally judicially determined to have resulted directly from the negligence or wilful misconduct of that Relevant Party.

- (e) The Sellers undertake to pay the Issuer, within three Business Days of demand, an amount equal to any cost or expense (including legal fees, costs and expenses) incurred by any Relevant Party in connection with investigating, preparing, pursuing or defending any action, claim, suit, investigation or proceeding arising out of, in connection with or based on any of the above, whether or not pending or threatened and whether or not any Relevant Party is a party.

25. Governing Law and Submission to Jurisdiction

- (a) This Agreement and any non-contractual obligations arising out of or in connection with it are governed by, and shall be construed in accordance with, English law.
- (b) Each Party hereby irrevocably submits to the non-exclusive jurisdiction of the English courts in any action or proceeding (including any action or proceeding relating to any non contractual obligations arising out of or in connection with this Agreement) arising out of or relating to this Agreement, and hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined by such courts. Each Party hereby irrevocably waives, to the fullest extent it may possibly do so, any defence or claim that the English courts are an inconvenient forum for the maintenance or hearing of such action or proceeding.

26. Service of process

The provisions of clause 31(B) of the Trust Deed shall apply *mutatis mutandis* to this Agreement.

ANNEX

FORM OF COLLATERAL ASSETS REPORT

MS Collateral Asset	Explanation
Deal ID	
Security Description	
MS Issuer	
Client Acct ID	
Security Number	
MS Asset Class Identifier	
MS Asset Cusip	
MS Seller ID	
Borrower	
Portfolio Name	
Facility Name	
MS Asset Class Identifier	
Source	
Coupon	
Maturity Date	
Par Amount	
Market Value	
Collateral Value	
Margin	
Price Source	
Pro-rata Allocations	
Moody	
S&P	
Fitch	
Attached Security	

ANNEX C

FORM OF DECLARATION OF TRUST

DECLARATION OF TRUST TERMS MODULE MARCH 2012 EDITION

This Declaration of Trust Terms Module sets out the declaration of trust provisions relating to Notes constituted and secured by the Trust Instrument in which it is specified that this Declaration of Trust Terms Module is incorporated. The terms of this Declaration of Trust Terms Module may be modified or supplemented by the Trust Instrument. Upon the execution of the Trust Instrument by the parties thereto described as parties to the Declaration of Trust, such parties will be deemed to have entered into a Declaration of Trust in respect of a Series on the terms set out below, as modified and/or supplemented by the Trust Instrument in respect of such Series.

1. DEFINITIONS AND CONSTRUCTION

1.1 Definitions

Capitalised terms used but not defined herein have the meanings given thereto in the terms and conditions of the Notes (the **Conditions**). In addition, in this Declaration of Trust Terms Module:

Additional Beneficiary means a person who becomes a Beneficiary by executing and delivering an Additional Beneficiary Deed of Accession.

Additional Beneficiary Deed of Accession means a deed of accession substantially in the form set out in Schedule 2 (*Additional Beneficiary Deed of Accession*).

Asset Trust means the trusts constituted over the Trust Assets in accordance with this Declaration of Trust.

Beneficiary means:

- (a) the Issuer; and
- (b) any Additional Beneficiary.

Event of Default has the meaning given thereto in the Collateral Transfer Agreement.

Party means the Issuer and the Sellers.

Relevant Security means, in respect of a Collateral Asset, all of the Seller's right, title and benefit in and to any security for that Collateral Asset including any mortgage or standard security, guarantee, cash reserve, assignment or assignation or other collateral, intercreditor agreement or deed of priority.

Seller Derivatives Account means the account specified as such in the applicable Final Terms.

Servicing Standard means the standard of care which would be exercised by a reasonable prudent corporate lender, assuming that such lender held no equity interest in any Obligor.

Transfer means any conveyance, assignment, sale, transfer, novation or other disposal (and cognate expressions shall be construed accordingly).

Trust Asset means each Collateral Asset designated as a Trust Asset by a Seller pursuant to a Collateral Assets Report.

Trustee means each Seller in its capacity as trustee of an Asset Trust.

2. CREATION OF ASSET TRUST

In consideration of the Beneficiary agreeing to enter into the Collateral Transfer Agreement, each Seller declares that it holds and shall hold the Trust Assets in respect of which it is the trustee as specified in the Collateral Assets Report (the **relevant Seller**) on and from the Issue Date or the first Collateral Assets Report Date on which such Trust Asset is specified as a Collateral Asset in a Collateral Assets Report (or, in the event that the Collateral Asset has previously been released from the Asset Trust, on and from the first Collateral Assets Report Date following such release on which it is specified as a Collateral Asset in a Collateral Assets Report), as applicable, on trust absolutely as to both capital and income for the Beneficiary upon, with and subject to the trusts, powers and provisions of this Declaration of Trust. For the avoidance of doubt, the Asset Trust in respect of the Proceeds in respect of Tagged Derivatives shall be declared over such Proceeds and the applicable Seller Derivatives Account and shall not be declared over the Tagged Derivatives themselves).

3. COSTS AND EXPENSES

3.1 The provisions of paragraph 24 (*Expenses*) of the Collateral Transfer Agreement shall apply *mutatis mutandis* to this Declaration of Trust.

3.2 The Sellers shall not meet from the Trust Assets (whether by reimbursement of costs and expenses incurred or otherwise) any costs and expenses incurred by it in connection with:

- (a) the performance of its obligations or the exercise of its rights under this Declaration of Trust;
- (b) the Asset Trust; or
- (c) the Trust Assets.

4. ENTITLEMENTS AND DISTRIBUTIONS

4.1 It is expressly agreed and declared that:

- (a) the absolute entitlement of the Beneficiary to the Trust Assets is vested and indefeasible, such that the Beneficiary is entitled to all amounts in respect of the Trust Assets as they are received and as they arise, and distributions of the same are to be made as set out in sub-clauses (b) and (c) below.

- (b) in accordance with sub-clauses (a) above, the relevant Seller shall have no power, discretion or duty to accumulate amounts representing income of the Asset Trust (other than the amounts deposited into the Seller Derivatives Account in accordance with sub-paragraph 3(g) of the Collateral Transfer Agreement) or otherwise treat such income as an accretion to capital, but shall distribute such amounts to the Beneficiary in accordance with the Transaction Documents; and
- (c) the relevant Seller shall distribute any amounts actually received by such Seller in respect of any amount of principal, interest, fees, costs or other amounts owing under a Trust Asset, other than those amounts in respect of Collateral Assets that are the Proceeds in respect of Tagged Derivatives (which shall be segregated and identified by the relevant Seller in accordance with clause 5.2 prior to being deposited into the Seller Derivatives Account in accordance with clause 5.1), to the Beneficiary in accordance with the Transaction Documents, and pending such distribution such amounts shall be held on trust for the benefit of the Beneficiary absolutely.

5. SEGREGATION OF PROCEEDS ON RECEIPT

- 5.1 Subject to clause 5.2 below, in respect of Collateral Assets which are the Proceeds in respect of Tagged Derivatives, the relevant Seller hereby agrees to pay such Proceeds, immediately upon receipt from the relevant counterparty, into the Seller Derivatives Account in respect of the relevant Series.
- 5.2 In respect of Collateral Assets which are the Proceeds in respect of Tagged Derivatives, if the relevant Seller is unable to immediately deposit such Proceeds into the Seller Derivatives Account in accordance with clause 5.1, such Seller hereby agrees to segregate and clearly identify such Proceeds upon receipt thereof and to record such Proceeds in a separate account in the name of the Issuer. The Seller must mark such account as being held separately from its own assets and those assets of any other third party prior to depositing such Proceeds into the Seller Derivatives Account in respect of the relevant Series.

6. RE-ACQUISITION OF BENEFICIARY'S INTEREST IN THE COLLATERAL ASSETS REPORT, TRUST ASSETS AND ADDITION OF TRUST ASSETS

- 6.1 On delivery to the Issuer of a Collateral Assets Report those Collateral Assets which were Collateral Assets prior to the Collateral Assets Report Date but that are not included in such Collateral Assets Report (such assets being referred to as the Re-Acquired Assets) shall no longer be Trust Assets, the beneficial interest therein formerly held by the Beneficiary shall thereby be released and re-vest in the relevant Seller and the Re-Acquired Assets, as the case may be, shall be held by the relevant Seller free from all trusts under or pursuant to this Declaration of Trust.

7. SELLER PROVISIONS

7.1 No Discretion

Save as set out in the Transaction Documents (including, without limitation, payments of amounts out of the Seller Derivatives Account in accordance with sub-paragraph 3(g) of the Collateral Transfer Agreement), or as the Beneficiary may otherwise direct, the relevant Seller, in its capacity as Trustee, shall have no right or power to deal with the Trust Assets in any manner whatsoever.

7.2 No power of investment

Save as expressly provided for in this Declaration of Trust or as authorised by the Beneficiary, the relevant Seller shall not have any further or other powers of investment with respect to the Trust Assets and neither the Trustee Act 2000 nor any other provision relating to trustee powers of investment implied by statute or general law shall apply to the Asset Trust.

7.3 Insurance

The relevant Seller shall not be under any obligation to insure any of the Trust Assets.

7.4 No implied duties

- (a) The duties and obligations of the relevant Seller under this Declaration of Trust shall be determined solely by the express provisions of the Transaction Documents. The relevant Seller shall not be liable under this Declaration of Trust except for the performance of such duties and obligations as shall be specifically set forth in the Transaction Documents. Without prejudice to the provisions of Clauses 8.1(a), 8.1(b), 8.1(c) and 8.1(f), no implied covenants or obligations shall be read into this Declaration of Trust against the relevant Seller (in its capacity as Trustee) and the permissible right of the relevant Seller to do things set out in this Declaration of Trust shall not be construed as a duty.
- (b) To the fullest extent permitted by law, none of Parts I, II, III, IV, or V of the Trustee Act 2000 nor the requirement to discharge the duty of care set out in Section 1(1) of the Trustee Act 2000 in exercising any of its powers shall apply to the trusts constituted by this Declaration of Trust or the role of the relevant Seller (in its capacity as Trustee) in respect of the Asset Trust. The disapplication of those Parts or Sections of the Trustee Act 2000 shall constitute an exclusion of the relevant Parts or Sections of the Trustee Act 2000 for the purposes of that Act.

7.5 Litigation

The relevant Seller may (in the case of (i) below) and shall after the occurrence of an Event of Default in relation to such Seller (in the case of (ii) below) prosecute or defend any legal or other proceedings anywhere in the world if (i) it is satisfied (after obtaining such legal or other advice which it considers appropriate in the circumstances) that it is in the interests of the Beneficiary to do so or (ii) it has been instructed by the Beneficiary or its agent to proceed.

7.6 No Liability

Without prejudice to clause 24 (*Expenses*) of the Collateral Transfer Agreement, neither the Sellers (in their capacity as Trustee) nor the Beneficiary shall be liable to one another, in the absence of wilful default, negligence, fraud or breach of the terms of this Declaration of Trust, in respect of any loss or damage which arises out of the exercise or attempted or purported exercise or failure to exercise any of their respective powers.

7.7 Reliance on certificates and advice

Each Seller in its capacity as Trustee may rely on and shall be protected in acting on, or in refraining from acting in accordance with, any resolution, officer's certificate, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond or other paper or document believed by it to be genuine and to have been signed or presented to it pursuant to this Declaration of Trust or the Collateral Transfer Agreement by the proper party or parties. Each Seller in its capacity as Trustee may, in relation to this Declaration of Trust, act on the opinion or advice of or a certificate or any information obtained from any lawyer, banker, valuer, broker, accountant, financial adviser, securities dealer, merchant bank, rating agency, computer consultant or other expert in the United Kingdom or elsewhere and shall not, provided that it shall not have acted fraudulently, negligently or in breach of any provision of either this Declaration of Trust or the Collateral Transfer Agreement to which it is a party, be responsible for any loss occasioned by so acting.

8. COVENANTS OF THE SELLERS

8.1 Affirmative Covenants of the Sellers

Each relevant Seller, in its capacity as Trustee, covenants with and undertakes to the Beneficiary that it shall for no fee:

- (a) administer and manage the relevant Trust Assets and act with respect to all relevant Trust Assets in accordance with the Servicing Standard;
- (b) perform and carry out the functions and maintain the records set out in Schedule 1 (Maintenance of Documents and Records);
- (c) on each Collateral Assets Report Date, clearly mark on its books and records that the relevant Trust Assets over which a declaration of trust is being declared absolutely in favour of the Issuer and the proceeds in respect thereof that are held on trust pursuant to Clause 4.1(c) are subject to the Asset Trust and constitute Collateral Assets;
- (d) following an Event of Default in relation to such Seller:
 - (i) take such action as is required to preserve and/or exercise and/or enforce any of such Seller's rights under or pursuant to the Trust Assets and any Relevant Security;
 - (ii) take such action in relation to the Trust Assets and the performance of its duties under this Declaration of Trust as is or which the Beneficiary may consider is necessary for the preservation, protection or enforcement of the rights of the Beneficiary hereunder;
 - (iii) take all such action as is necessary to preserve and/or exercise and/or enforce any of its and the Beneficiary's rights, and perform and observe its obligations under and pursuant to the Transaction Documents or pursuant to which it or the Beneficiary derives a benefit; and
 - (iv) if so instructed by the Beneficiary, seek consents under, modifications to or waivers of the terms of any Trust Asset;

- (e) perform its obligations in respect of the Asset Trust under and pursuant to the Transaction Documents;
- (f) take all such reasonable action as is necessary to preserve and/or exercise and/or enforce any of its and the Beneficiary's rights and perform and observe its obligations under and pursuant to the Transaction Documents or pursuant to which it or the Beneficiary derives a benefit, including complying with all of its obligations and exercising and enforcing all of its rights and remedies against the relevant counterparty using commercially reasonable efforts (provided that the relevant Seller shall not be obliged pursuant to this sub-clause to bring any form of legal action against the relevant counterparty) in respect of each Tagged Derivative the Proceeds in respect of which constitute a Collateral Asset in order to maximise the Proceeds received by such Seller from such Tagged Derivative; and
- (g) The Sellers shall procure that at all times all principal amounts which remain outstanding under each Trust Asset that is a loan and all its other rights in respect of any such Trust Asset that has been identified to the Issuer by the Sellers in a Collateral Assets Report (and which has not been retransferred by the Issuer to the Sellers) shall be held by the Sellers as trustee on trust absolutely as to both capital and income for the Beneficiary upon, with and subject to the trusts, powers and provisions of this Declaration of Trust.

8.2 Operations in the Ordinary Course of Business

If a Seller has a liquidator, receiver, manager, receiver and manager, administrative receiver, administrator, judicial factor or any other similar or analogous official appointed in respect of it or if such Seller is otherwise wound-up or dissolved (each a **Liquidation Event**), it will, for the purposes of this Declaration of Trust, be deemed to be acting in the ordinary course of its business when it performs, carries out or observes its obligations under or pursuant to this Declaration of Trust, the Collateral Transfer Agreement and the Trust Assets in the manner in which it would have done so prior to such Liquidation Event occurring.

8.3 Negative Covenants of the Sellers

Each Seller in its capacity as Trustee covenants with and undertakes to the Beneficiary that it shall not:

- (a) cause, allow or permit payments to be made in respect of the Trust Assets other than in accordance with the Transaction Documents;
- (b) transfer or dispose of the Trust Assets or deal with any of them in such a way as to confer rights in any of them on any third parties or create any Security Interest over any of the Trust Assets; and
- (c) part with possession, custody or control of any material documentation related to a Trust Asset other than (i) with the prior written consent of the Beneficiary, or (ii) pursuant to any court order, or any direction of a statutory or governmental agency or other body with whose directions such Seller ordinarily complies, or (iii) otherwise as is necessary to enforce a claim against an Obligor, or (iv) if the relevant Trust Asset is a loan made under a syndicated facility in respect of which such Seller is not the

agent or security trustee, or (v) to its professional advisors (provided that it retains control of such documentation) or otherwise as permitted by this Declaration of Trust.

9. CHANGES TO THE PARTIES

- 9.1 Save as otherwise contemplated under the Transaction Documents, neither of the Parties may Transfer any of their right, title and interest in the Trust Assets or under this Declaration of Trust to any other person (a Transferee) except with the consent of the other Party provided that the Beneficiary may do so without the relevant Seller's consent following the occurrence of an Event of Default in relation to such Seller.
- 9.2 Where the Beneficiary exercises its rights under Clause 9.1 to Transfer any of their right, title and interest in the Trust Assets or under this Declaration of Trust, the relevant Transferee may accede to this Declaration of Trust as an Additional Beneficiary by executing and delivering to the other Parties an Additional Beneficiary Deed of Accession.
- 9.3 Where there is more than one Beneficiary, the obligations of the Beneficiaries under this Declaration of Trust will be several. Failure by a Beneficiary to perform its obligations under this Declaration of Trust does not affect the obligations of any other Party under this Declaration of Trust. No Beneficiary is responsible for the obligations of any other Beneficiary under this Declaration of Trust. At such time as there is more than one Beneficiary, the Parties shall agree such changes to this Declaration of Trust as shall be necessary to give effect to such provisions.

10. POWER TO DELEGATE

Each Seller, if it is directed in writing to do so by the Beneficiary, shall (notwithstanding any rule of law or equity to the contrary) appoint an agent, attorney or delegate (revocably or irrevocably and for a limited or unlimited period of time) for the performance of all or any of its obligations and the exercise of all or any of its powers under this Declaration of Trust or imposed or conferred on it by law or otherwise to any person or body of persons fluctuating in number selected by it and any such delegation may be by power of attorney or in such other manner as such Seller may think fit (subject to the terms of any written direction by the Beneficiary) and such appointment may be made upon such terms and conditions (including the power to sub-delegate) as such Seller may think fit (subject to the terms of any written direction by the Beneficiary).

11. FORBEARANCE, SEVERABILITY, VARIATIONS AND CONSENTS

11.1 Delay etc

All rights, powers and privileges under this Declaration of Trust shall continue in full force and effect, regardless of the Beneficiary exercising, delaying in exercising or omitting to exercise all or any of them.

11.2 Severability

No provision of this Declaration of Trust shall be avoided, invalidated or rendered unenforceable by reason only of one or more other provisions being invalid or unenforceable.

11.3 Illegality, invalidity, unenforceability

Any provision of this Declaration of Trust which is or becomes illegal, invalid or unenforceable shall be ineffective only to the extent of such illegality, invalidity and unenforceability, without invalidating the remaining provisions of this Declaration of Trust.

11.4 Variations

No variation of this Declaration of Trust shall be valid and constitute part of this Declaration of Trust, unless such variation shall have been made in writing and signed by the Parties.

12. NOTICES

The provisions of paragraph 16 (*Notices and Other Communications*) of the Collateral Transfer Agreement shall apply *mutatis mutandis* to this Declaration of Trust.

13. APPOINTMENT, RETIREMENT AND REPLACEMENT OF TRUSTEE

13.1 The relevant Seller shall not, and shall not purport to, retire as the Trustee without the consent of the Beneficiary. The appointment of any new or additional trustee and/or the replacement or retirement of such Seller as Trustee will only be effected with the consent of the Beneficiary and such Seller.

13.2 The Issuer hereby covenants that, notwithstanding its right as the sole beneficiary absolutely entitled to the beneficial interest in the applicable Trust Assets, it will not direct the Trustee to wind up the Asset Trust and transfer the Trust Assets to it where such a legal transfer would cause the Trustee to breach transfer restrictions in the relevant Trust Assets.

14. TERMINATION

14.1 Each Asset Trust will terminate on the earlier of (i) the relevant Collateral Assets Report Date pursuant to Clause 6 to the extent the relevant Collateral Assets are to be transferred by the Issuer to the Sellers pursuant to the Collateral Transfer Agreement, (ii) the Repurchase Date provided that the Issuer has not elected pursuant to sub-paragraph 3(f) of the Collateral Transfer Agreement to deliver Equivalent Assets instead of terminating such Asset Trust and (iii) the date falling 60 years after the Issue Date (the Long Stop Date).

14.2 On termination of the Asset Trust on the Long Stop Date, legal title in all of the Trust Assets shall be transferred to the Beneficiary and vested in the Beneficiary absolutely and following such transfer and vesting the relevant Trust Assets shall be free from all trusts under or pursuant to this Declaration of Trust.

15. FURTHER ASSURANCES

The Parties agree that they will cooperate fully to do all such further acts and things and execute any further documents as may be necessary or desirable to give full effect to the arrangements contemplated by this Declaration of Trust.

16. AMENDMENTS, ETC.

16.1 Amendments and Waivers

No amendment or waiver of any provision of this Declaration of Trust nor consent to any departure by any of the parties therefrom shall in any event be effective unless the same shall be in writing and signed by each of the parties hereto. In the case of a waiver or consent, such waiver or consent shall be effective only in the specific instance and as against the party or parties giving it for the specific purpose for which given.

16.2 Entire Agreement

This Declaration of Trust contains a final and complete integration of all prior expressions by the Parties with respect to the subject matter of this Declaration of Trust and constitutes the entire agreement among the Parties with respect to the subject matter of this Declaration of Trust superseding all prior oral or written understandings other than the other Transaction Documents.

17. NO PARTNERSHIP OR AGENCY

Nothing in this Declaration of Trust shall be taken to constitute or create a partnership between any of the Parties to this Declaration of Trust or to make or appoint the relevant Seller the agent of the Beneficiary.

18. THIRD PARTY RIGHTS

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Declaration of Trust.

19. CALCULATIONS

In the absence of manifest error, any determination or calculation performed by or on behalf of the relevant Seller (in its capacity as Trustee) in connection with the provisions of this Declaration of Trust shall be deemed to be conclusive.

20. GOVERNING LAW AND SUBMISSION TO JURISDICTION

20.1 Governing Law

This Declaration of Trust and any non-contractual obligations arising out of or in connection with it are governed by, and shall be construed in accordance with, English law.

20.2 Submission to Jurisdiction

Each Party hereby irrevocably submits to the non-exclusive jurisdiction of the English courts in any action or proceeding arising out of or relating to this Declaration of Trust, and hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined by such courts. Each Party hereby irrevocably waives, to the fullest extent it may possibly do so, any defence or claim that the English courts are an inconvenient forum for the maintenance or hearing of such action or proceeding.

20.3 Service of process

The provisions of clause 31(B) of the Trust Deed shall apply *mutatis mutandis* to this Declaration of Trust.

SCHEDULE 1

MAINTENANCE OF DOCUMENTS AND RECORDS

1. MAINTENANCE OF DOCUMENTS AND RECORDS

- (a) The relevant Seller shall not wilfully destroy any material documentation in relation to the Trust Assets or Relevant Security (and shall procure that such documentation is not wilfully destroyed) otherwise than in accordance with its ordinary business practices and the law from time to time
- (b) The relevant Seller shall keep all material documentation in relation to the Trust Assets or Relevant Security that would be kept by a reasonable prudent corporate lender.
- (c) Upon reasonable request by the Beneficiary, the relevant Seller shall inform the Beneficiary of the location at which documentation relating to any Trust Asset or Relevant Security is kept as at the date of such request and shall, upon reasonable notice, make available such documentation subject to any confidentiality undertaking or other confidentiality obligation to which the relevant Seller is bound and any other restriction the relevant Seller believes may prevent such disclosure.
- (d) The relevant Seller shall ensure that any documentation in relation to a Trust Asset or Relevant Security is kept in a manner which makes it identifiable by reference to the information in relation to that Trust Asset set out in the schedule to the relevant Collateral Assets Report.
- (e) The relevant Seller shall keep and maintain in all material respects proper and up to date accounts, books and records in respect of each Trust Asset and the same shall be kept in the relevant Seller's possession or be held to its order.

2. FURTHER INFORMATION

- (a) Each Seller shall (subject to any confidentiality or other legal restrictions to which it is subject) provide to the Beneficiary (within a reasonable period following such request) such documentation and additional information to which such Seller is entitled in relation to the Trust Assets and/or the Obligors as the Beneficiary may reasonably request.
- (b) On request by the Beneficiary following a request for additional information under sub-clause (a) above, such Seller shall use reasonable endeavours to obtain such consents, modifications or waivers necessary to ensure that confidentiality and other legal restrictions would not prevent the provision of such information to the Beneficiary.

3. AMOUNTS RECEIVED UNDER COLLATERAL ASSETS

Promptly following the date on which an Event of Default in relation to a Seller occurs, such Seller shall if so directed by the Beneficiary, subject to the receipt of the consent of the Note Trustee:

- (a) procure that all amounts of principal, interest, fees, costs or other amounts owing under the relevant Trust Assets received by such Seller are credited to an account nominated by the Beneficiary; and
- (b) unless otherwise agreed with the Beneficiary, notify each Obligor that such Seller's beneficial interest in such Obligor's Collateral Asset is subject to the Asset Trust.

4. FOLLOWING AN EVENT OF DEFAULT

Following the occurrence of an Event of Default in relation to a Seller, if requested by the Beneficiary, such Seller shall procure access for the Beneficiary to locations where Trust Assets are located and access to all information technology systems on which material information relating to any Trust Asset is kept.

SCHEDULE 2

ADDITIONAL BENEFICIARY DEED OF ACCESSION

To: [Seller] (as **Trustee**)

[*Details of Beneficiaries*]

From: [*Proposed Additional Beneficiary*]

(as the **Transferee**)

[*Date*]

Declaration of Trust (the **Declaration of Trust**) dated [●] 20[●] between [Seller] and Morgan Stanley Secured Financing LLC (the **Beneficiary**)

1. We refer to the Declaration of Trust.
2. This is an Additional Beneficiary Deed of Accession.
3. Terms defined (including by reference) in the Declaration of Trust bear the same meanings in this Additional Beneficiary Deed of Accession.
4. The Transferee hereby assumes all of the rights and benefits and agrees to be bound by all the obligations, covenants and undertakings applicable to an Additional Beneficiary under the Declaration of Trust.
5. The Transferee's administrative details are as follows:

Address: [●]

Fax: [●]

Attention: [●]
6. This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by English law.

[*execution as a deed*]

ANNEX D

FORM OF MASTER PARTICIPATION MODULE

MASTER PARTICIPATION TERMS MODULE

APRIL 2010 EDITION

This Master Participation Terms Module sets out the master participation provisions relating to Notes constituted and secured by the Trust Instrument in which it is specified that this Master Participation Terms Module is incorporated. The terms of this Master Participation Terms Module may be modified or supplemented by the Trust Instrument. Upon the execution of the Trust Instrument by the parties thereto described as parties to the Master Participation Agreement, such parties will be deemed to have entered into a Master Participation Agreement in respect of a Series on the terms set out below, as modified and/or supplemented by the Trust Instrument in respect of such Series.

RECITALS

WHEREAS, Grantor has agreed to sell to Participant, and Participant has agreed to purchase from Grantor, a 100% undivided participation interest in all of Grantor's right, title and interest in certain loans set out in the relevant Collateral Assets Report (collectively, the **Loans**) to the extent and on the terms and conditions set forth below;

WHEREAS, the parties have agreed, subject to the terms and conditions contained herein, to settle the purchase and sale of the participation interest in the Loans hereunder;

1. Definitions

Capitalised terms used but not defined herein have the meanings given thereto in the terms and conditions of the Notes (the **Conditions**). In addition, in this Master Participation Terms Module, the following terms have the following meanings:

Assumed Obligations means all obligations and liabilities of Grantor with respect to, or in connection with, any Participated Interest resulting from facts, events or circumstances arising or accruing on or after the Effective Date.

Bankruptcy Code means The Bankruptcy Reform Act of 1978, 11 U.S.C. §§101 et seq., as amended.

Borrower means, for any Loan, the applicable borrower(s) as set out in the relevant Collateral Assets Report.

Business Day means any day that is not (a) a Saturday, (b) a Sunday, or (c) any other day on which commercial banks are required by law to be closed in the State of New York.

Effective Date means the later of (i) the date each party receives a counterpart of the Trust Instrument which constitutes the Master Participation Agreement and (ii) in respect of any Participation, the applicable Collateral Assets Report Date in respect of the Collateral Assets Report which first includes the Loan to which such Participation relates as a Collateral Asset.

Grantor means the Seller specified as the grantor in respect of the relevant Loans in the applicable Collateral Assets Report.

LIBOR means the offered rates by Reference Banks (as defined below) for deposits in U.S. Dollars for a period of one week which appear on the Reuters Screen LIBO page as of 11:00 a.m., London time, on the day on which it is to be determined. The rate shall be the arithmetic mean of quotations provided by Citibank, JP Morgan Chase Bank, Bank of America and Deutsche Bank (the **Reference Banks**); provided, however, that if all four quotations are not available but at least two quotations appear on the Reuters Screen LIBO Page, the rate shall be the arithmetic mean of such quotations. If fewer than two quotations appear, the rate shall be determined by Grantor and Participant in good faith.

Loan Documents means for any Loan, all loan documents and agreements under which the applicable Participated Interest or any part thereof has been created and all material documents and agreements relating thereto, and all amendments, waivers and consents thereto.

Note Trustee means BNY Mellon Corporate Trustee Services Limited and its successors and assigns.

Participant means the Issuer.

Participated Interests means (i) each of the Loans and (ii) to the extent related thereto, any and all rights, claims (including "claims" within the meaning of Section 101(5) of the Bankruptcy Code), causes of action, any other right of Grantor against any Borrower, and any other Person that arise under, from, in, to or in connection with the Loan Documents.

Person means individuals, partnerships, corporations, banks, governmental authorities or bodies, and other entities of any kind.

Retained Obligations means all obligations and liabilities of Grantor relating to each Participated Interest that (i) result from facts, events or circumstances arising or occurring prior to the Effective Date, (ii) result from Grantor's breach of its representations, warranties, covenants, or agreements under the Master Participation Agreement or any Loan Document, (iii) result from Grantor's bad faith, gross negligence, or willful misconduct or (iv) are attributable to Grantor's actions or obligations in any capacity other than as a lender under any Loan Document.

Repurchase Date has the meaning given thereto in the relevant Collateral Transfer Agreement.

2. The Participations

2.1 As of the Effective Date, (a) Grantor hereby sells, transfers and grants to Participant without recourse, and Participant hereby purchases from Grantor, a total undivided 100% participation interest (the **Participations**) in each of the Loans and the related Participated Interests and (b) Participant hereby purchases the Participations and assumes the Assumed Obligations excluding only the Retained Obligations. On the Effective Date, Participant shall pay to Grantor the applicable purchase prices set forth in the relevant Collateral Assets Report (the **Purchase Prices**) for the Participations to Grantor, at the account set forth in the applicable Final Terms or as otherwise notified to the Participant by the Grantor. Grantor hereby agrees to remain responsible for, and agrees to perform and comply with, the Retained Obligations. In no event shall the Participation be deemed to be a loan from Participant to Grantor.

- 2.2 Grantor hereby assigns and pledges to the Participant and grants to the Participant a continuing security interest in and to, and a lien upon and right of set-off against, and transfers to the Participant, as and by way of a security interest having priority over all other security interests, all of Grantor's right, title and interest in and to each Loan in which the Participant owns a Participated Interest, to the extent of such Participated Interest to secure Grantor's obligations hereunder. Grantor hereby gives the Participant authority to file, or procure the filing of, a UCC financing statement in order to perfect the security interest granted herein, and Grantor shall make any necessary updates as may be required, and take any other steps necessary or desirable, to ensure that the Participant has a valid and perfected security interest in the collateral granted to it hereunder under the laws of any applicable jurisdiction.
- 2.3 Upon the occurrence of any default with respect to Grantor in respect of a Participated Interest hereunder or any Event of Default under the relevant Collateral Transfer Agreement in respect of the Grantor, the Participant, or the Note Trustee on its behalf, may in its sole discretion, take any of the following actions, in each case at Grantor's expense and without prior notice to Grantor (other than as required by law):
- (i) exercise its elevation rights as set forth in Section 5 in respect of any Loan in which the Participant holds a Participated Interest;
 - (ii) liquidate any Loan in which the Participant holds a Participated Interest (to the extent of such Participated Interest) or the Participated Interest therein through one or more public or private sales or other dispositions which may be to an affiliate of the Grantor (including, to the extent permitted by the Loan Documents, by the sale of a full or partial participation in any such Loan or Participated Interest), free from any claim or right of any nature whatsoever of the Grantor, including any equity or right of redemption by the Grantor, and to apply the proceeds or the cash equivalent thereof from the liquidation of any Loan or Participated Interest therein to any amounts payable by the Grantor hereunder;
 - (iii) exercise all consent, voting and other rights relating to any Loan in which the Participant holds a Participated Interest (to the extent of such Participated Interest and to the extent practicable under the circumstances) and perform any obligation that the Grantor may have with respect to such Loan; or
 - (iv) collect amounts owed by any Borrower in respect of any Loan in which the Participant holds a Participated Interest (to the extent of such Participated Interest) and apply such amounts directly to the Grantor's obligations to the Participant hereunder.

The Grantor hereby acknowledges that any exercise by a Participant, or the Note Trustee on its behalf, of any of the remedies set forth in this Section 2.3, including, without limitation, any sale of a full or partial Participated Interest in any Loan at a price lower than may have been received upon an outright assignment of such Loan, shall be commercially reasonable. The Grantor further acknowledges that each Loan is of a kind that is customarily sold on a recognized market or is the subject of widely distributed standard price quotations. Further, the Grantor agrees that the Participant shall have the right to determine in its reasonable discretion at the time of any exercise of remedies whether any Loan (or any Participated

Interest therein) threatens to decline speedily in value, that any such determination shall be conclusive and binding on the Grantor and the Participant may dispose of such Loan (or any Participated Interest therein) without notice to the Grantor based upon such determination. The Grantor agrees that, if notice of any disposition of a Loan by a Participant in its exercise of remedies hereunder is required by applicable law, one day's notice by electronic or overnight mail given prior to the date of such disposition shall be sufficient to constitute reasonable authenticated notification of disposition to the Grantor.

- 2.4 Grantor will, promptly following receipt, credit the account of Participant from time to time for all amounts representing principal, interest, fees, or any other payments or distributions in respect of the Participated Interests (**Distributions**) received by Grantor. If Grantor receives any payment in respect of reimbursement of increased costs attributable to any Participation, it will promptly pay such amount to Participant. If securities are to be issued pursuant to a plan of reorganization or restructuring or otherwise, in payment of any Participated Interest, Grantor shall notify Participant of such prospective issuance and shall cause Participant's share of such securities to be registered and issued in such name or names as Participant shall direct unless Grantor is prohibited from the foregoing under any law, rule, order or contract. In the event that Grantor cannot cause such instruments to be so registered it will, promptly after receipt, transfer Participant's share of such instruments to Participant with proper endorsement (without recourse) or transfer powers duly endorsed in blank unless Grantor is prohibited from the foregoing under any law, rule, order or contract in which case Grantor will continue to hold the same for Participant's account hereunder.
- 2.5 Grantor and Participant agree that each shall be bound by and entitled to the benefits of the provisions in any applicable Loan Document relating to rights of set-off and counterclaim with respect to the Participations.
- 2.6 If either party fails to pay any amount (including, to the extent permitted by applicable law, interest) payable by it to the other party hereunder when timely notified and due, such party will pay to the other party, upon demand, interest on the amount of such payment, for the period from and including the date on which such amount became due to but excluding the date the same is paid in full, at a rate per annum equal to LIBOR.
- 2.7 Each of the Grantor and the Participant represents to the other on the Effective Date that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or incorporation; (ii) it has full power, authority and legal right to execute and deliver the Master Participation Agreement and to perform its obligations thereunder; (iii) the making and performance by it of the Master Participation Agreement have been duly authorized by all necessary action and will not violate any provisions of applicable law or regulation, any provision of its charter or by-laws (or comparable, constituent documents) or any order of any court or regulatory body and will not result in the breach of, or constitute a default or require any consent under, any agreement, instrument or document to which it is a party or by which it or any of its property may be bound or affected; (iv) all authorizations, consents, approvals and licenses of, and filings and registrations with, any governmental authority required under applicable law or regulations for it to make and perform the Master Participation Agreement have been obtained and are in full force and effect; and (v) the Master Participation Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

- 2.8 In addition, Grantor represents to Participant that: (i) Grantor is the sole owner of the Participated Interests, free and clear of all liens and encumbrances and has not conveyed any interest in the Participated Interests to any other Person; (ii) each Participation represents a participation interest in the principal amounts of Grantor's Loans as set forth in the relevant Collateral Assets Report; (iii) Grantor is a sophisticated seller with respect to the Participations and has adequate information concerning the business and financial condition of each Borrower to make an informed decision regarding the sale of the Participations and has independently and without reliance on Participant and based on such information as Grantor has deemed appropriate, made its own analysis and decision to enter into the Master Participation Agreement, except that Grantor has relied upon the representations, warranties and covenants of Participant expressly provided in the Master Participation Agreement; and (iv) on the Effective Date, Grantor is not holding any Participation with assets which directly or indirectly constitute assets of any employee benefit plan or other retirement arrangement subject to the Employee Retirement Income Security Act of 1974 (**ERISA**) or Section 4975 of the Internal Revenue Code. In addition, Grantor acknowledges and confirms that (x) Participant may possess or may hereafter come into possession of certain non-public information concerning the Participated Interests, any Borrower and its affiliates which is not known to Grantor and which may be material to a decision to acquire the Participations (the **Participant Excluded Information**), (y) Grantor has requested not to receive the Participant Excluded Information and has determined to transfer the Participations notwithstanding its lack of knowledge of the Participant Excluded Information and (z) Participant shall have no liability to Grantor (and Grantor hereby waives and releases any claims which it might have against Participant or any other Person, whether pursuant to applicable securities laws or otherwise) with respect to the non-disclosure of the Participant Excluded Information.
- 2.9 In addition, Participant represents to Grantor on the Effective Date that: (a) it is not acquiring any Participation with assets which directly or indirectly constitute assets of any employee benefit plan or other retirement arrangement subject to ERISA or Section 4975 of the Internal Revenue Code; (b) Participant acknowledges that it has, independently and without reliance on Grantor, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to purchase each Participation and assume the Assumed Obligations, except that Participant has relied on the representations, warranties and covenants of Grantor expressly provided in the Master Participation Agreement and will continue to be responsible for making its own independent appraisal of the business, affairs and financial condition of each Borrower; and (c) Participant acknowledges and confirms that (A) Grantor may possess or may hereafter come into possession of certain non-public information concerning the Participated Interests, each Borrower and its affiliates which is not known to Participant and which may be material to a decision to acquire the Participations (the **Grantor Excluded Information**), (B) Participant has requested not to receive the Grantor Excluded Information and has determined to acquire the Participations notwithstanding its lack of knowledge of the Grantor Excluded Information, and (C) Grantor shall have no liability to Participant (and Participant hereby waives and releases any claims which it might have against Grantor or any other Person, whether pursuant to applicable securities laws or otherwise) with respect to the non-disclosure of the Grantor Excluded Information.
- 2.10 Participant and Grantor acknowledge that (i) each party makes only the representations and warranties set forth above, (ii) the transfer of each Participation by Grantor to the Participant or by the Participant to Grantor is and will be irrevocable and without recourse to each party and is without representation or warranty, whether express or implied, of any kind or

character by each party except as expressly provided in this Master Participation Agreement, (iii) each party makes no representation or warranty in connection with any Participation and assumes no responsibility with respect to any statements, warranties, or representations made by any Person other than such party in or in connection with the related Loan Documents or the execution, legality, validity, or enforceability (with respect to any Person other than such party) of such related Loan Documents, and (iv) each party makes no representation or warranty and assumes no responsibility with respect to the financial condition, creditworthiness, properties, affairs, status or nature of the Borrowers under any Participated Interest or the performance or observance by such Borrowers of any of their obligations under the related Loan Documents or any other instrument or document.

- 2.11 For the avoidance of doubt, the Note Trustee shall not be obliged to take any action under the Master Participation Agreement unless it has received directions from the Noteholders acting by an Extraordinary Resolution and in any case then only if it shall be indemnified and/or secured and/or prefunded to its satisfaction in accordance with clause 10(A) of the Trust Terms Module as incorporated into and modified by the relevant Trust Instrument for the Series and, in the case of making any determination, following receipt of any advice that the Note Trustee may deem necessary in its absolute discretion.

3. Standard of Care; Non-Recourse Participation; Enforcement, Amendment, Modification; Information.

- 3.1 Grantor agrees that all amounts received or applied by Grantor in respect of the Participated Interest shall be received by Grantor as custodian for Participant with respect to such amounts. Grantor will endeavor to exercise the same care in making and in handling each Loan as Grantor exercises with respect to loans in which no participations are granted by Grantor; provided, however, that it is understood that, except as expressly provided herein, the sole obligation of Grantor shall be to distribute promptly to Participant, as and when received by Grantor, the amounts credited to Participant's account as provided in Section 2 above. Except as expressly provided herein, Grantor does not assume any other duties or responsibility. Except for its duty to act as custodian hereunder, Grantor shall not, by reason of the Master Participation Agreement, be a trustee for, or otherwise have a fiduciary relationship with, Participant and Grantor shall have no duty either express or implied that restricts or otherwise limits Grantor's ability to purchase, sell or otherwise trade other interests in the Loans or any other obligations of the Borrower for its own account and for its own benefit or otherwise.

- 3.2 Participant hereby agrees to be bound by the confidentiality provisions or restriction set forth in the Loan Documents, in each case as if Participant were a Lender thereunder. Subject to the last clause of this Section 3.2, Grantor will use good faith efforts to furnish to Participant copies of any documents or written information received by Grantor in its capacity as a Lender under the Loan Documents; provided, however, Grantor shall have no obligation or liability to Participant for its failure to deliver any of the foregoing. Grantor shall have no responsibility or liability to Participant regarding the accuracy, completeness, validity or content of any of the documents furnished under this Section. Notwithstanding any other term of the Master Participation Agreement to the contrary, Grantor shall not be required to receive or to furnish to Participant any documents relating to the Borrower or any of its affiliates or to the Participation which Grantor (in its sole discretion) determines may be or contain material non-public information if Grantor (in its sole discretion) believes that receiving such documents may restrict in any way the ability of Grantor or any of its affiliates

to purchase or sell securities issued by the Borrower or any of its affiliates or any claims against or interest in the Borrower or any of its affiliates; provided, however, in such case, if requested by Participant, Grantor shall use good faith efforts to have such documents furnished directly to Participant.

- 3.3 Participant agrees and acknowledges that it shall have no right to direct Grantor to act or refrain from acting in respect of any request, act, decision or vote with respect to a Participation.

4. Withholding Taxes

- 4.1 Participant represents that it is entitled to receive any payments to be made to it hereunder without the withholding of any tax and will furnish to Grantor such forms, certifications, statements and other documents as Grantor may request from time to time to evidence Participant's exemption from the withholding of any tax imposed by any jurisdiction or to enable Grantor to comply with any applicable laws or regulations relating thereto. All payments by Participant hereunder shall be made free and clear of any deduction or withholding except for such deduction or withholding as may be required to be made from such payments by law.

5. Termination and Elevation

- 5.1 Participant, or the Note Trustee on its behalf, may elect (but, for avoidance of doubt, shall not be required to make either election), at its sole discretion, with respect to each individual Participation, to deliver a notice of elevation to Grantor, in which case, subject to any restrictions contained in the applicable Loan Documents, the parties agree to execute all documents and take all actions necessary to effect an outright assignment of the applicable Participated Interest directly to Participant.
- 5.2 Subject to Section 5.3, on delivery to the Participant of a Collateral Assets Report, the Participation in respect of those Loans which were Collateral Assets prior to the Collateral Assets Report Date but that are not included in such Collateral Assets Report shall be terminated as of such Collateral Assets Report Date.
- 5.3 Subject to Section 5.1, each Participation will terminate on the earlier of (i) the relevant Collateral Assets Report Date pursuant to Section 5.2 to the extent the relevant Collateral Assets are to be transferred by the Issuer to the Sellers pursuant to the Collateral Transfer Agreement and (ii) the Repurchase Date provided that the Issuer has not elected pursuant to paragraph 3(f) of the Collateral Transfer Agreement to deliver Equivalent Assets instead of terminating such Participation.

6. Miscellaneous

- 6.1 Except as otherwise provided herein, all communications hereunder by either party shall be given in writing or by facsimile transmitter to the other party at its address specified in Schedule 2 to the Trust Instrument, and shall be effective when received. Grantor may rely upon any notice, instruction, consent or other communication (oral or otherwise) from Participant that Grantor reasonably believes to be genuine and correct or to have been signed, sent or made by a proper person or persons.

- 6.2 Restrictions and limitations on the sale, assignment, participation, subparticipation or other transfer of the Participation or any interest therein contained in the Loan Documents or required therein to be included in the Master Participation Agreement are hereby incorporated by reference as if fully set forth herein. Subject to such restrictions and limitations, Participant may not sell, assign or trade the Participation or its rights or obligations thereunder in whole or in part to any other person without the prior written consent of Grantor (which consent shall not be unreasonably withheld); provided, however, that Grantor shall be deemed to have reasonably withheld consent to any transfer of any interest in the Participation that results in the Participated Interests being viewed as "plan assets" within the meaning of Department of Labor Regulations Section 2510.3-101(f), it being understood that Grantor shall have no obligation to ensure that such assets are not viewed as "plan assets". Grantor may sell other participations in the Loans and/or assign any of its right, title or interest therein, provided, however, that the aggregate principal amount of all such participations does not exceed the aggregate principal amount of such Loans purchased, made or to be made by Grantor, after giving effect to any such assignment. Participant shall pay to Grantor a transfer fee of \$3,000 in connection with any transfer to which Grantor has given its written consent, and shall pay or reimburse Grantor for all costs with expenses (including the reasonable fees and disbursements of counsel) incurred in connection therewith. Participant may subparticipate the Participation, or any part thereof, without the prior written consent of Grantor; provided, however, that (i) any such subparticipation may only be made in compliance with applicable laws (including applicable securities laws); (ii) each subparticipant must make in favor of Grantor the representations, warranties and acknowledgements set forth in Section 2.7; and (iii) Grantor shall continue to deal solely with Participant in connection with the Participation.
- 6.3 THE MASTER PARTICIPATION AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.
- 6.4 The parties hereto hereby irrevocably submit to the jurisdiction of any New York State or United States Federal court sitting in New York County over any action or proceeding arising out of or relating to the Master Participation Agreement, and the parties hereto hereby irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such New York State or Federal court. The parties hereto irrevocably consent to the service of any and all process in any such action or proceeding by the mailing of copies of such process to the other party at its address specified in Schedule 2 to the Trust Instrument. The parties hereto agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The parties to the Master Participation Agreement further waive any objection to venue in any court referred to in the first sentence of this Section 6.4 and any objection to an action or proceeding in such court on the basis of forum non conveniens. The parties to the Master Participation Agreement further agree that any action or proceeding brought against any party to the Master Participation Agreement shall be brought only in a New York State or United States Federal court sitting in New York County. Nothing in this Section 6.4 shall affect the right of any party to the Master Participation Agreement to serve legal process in any other manner permitted by law or affect the right of any party to the Master Participation Agreement to bring any action or proceeding against the other party or its property in the courts of any other jurisdiction. To the extent that any party to the Master Participation Agreement has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with

respect to itself or its property, such party hereby irrevocably waives such immunity in respect of its obligations under the Master Participation Agreement.

- 6.5 EACH OF THE GRANTOR AND THE PARTICIPANT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE MASTER PARTICIPATION AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.
- 6.6 Each party will not, except as otherwise required by law or required or requested by governmental authorities having jurisdiction over such party, disclose, and will not permit to be disclosed, to any Person other than its counsel, independent accountants, affiliates and such governmental authorities the existence or the terms of the Master Participation Agreement without the prior written consent of the other party; provided, however, that Participant may disclose the existence of any Participation and the terms of the Master Participation Agreement (but not any Purchase Price) to any prospective participant or transferee of any Participation.
- 6.7 The rights, powers and remedies of any party to the Master Participation Agreement hereunder are cumulative and in addition to all rights, powers and remedies provided at law, in equity or otherwise. Neither any delay nor any omission by any party to the Master Participation Agreement to exercise any right, power or remedy shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or any exercise of any other right, power or remedy.
- 6.8 The Master Participation Agreement may be executed in one or more counterparts, each of which shall be an original but all of which, taken together, shall constitute one and the same instrument. Any amendments of the Master Participation Agreement shall be in writing and signed by each party thereto.
- 6.9 Each party thereto agrees to bear its own expenses in connection with the preparation, execution, delivery and amendment of the Master Participation Agreement.
- 6.10 All representations, warranties and covenants made by the parties to the Master Participation Agreement shall be considered to have been relied upon by the parties thereto and shall survive the Effective Date and the execution, delivery and performance of the Master Participation Agreement, any termination thereof, or any sale, assignment, participation or transfer by any party thereto pursuant to Section 5 or 6.2 thereof. Subject to the limitations set forth in Section 6.2, the Master Participation Agreement, including without limitation, the representations, warranties, covenants, agreements and indemnifications contained therein, shall inure to the benefit of and be enforceable by and against the parties thereto and each of their respective successors and permitted assigns and transferees. Each of the parties thereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other party may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of the Master Participation Agreement.
- 6.11 All demands, notices, requests, consents, and communications under the Master Participation Agreement shall be in writing and shall be deemed to have been duly given if personally delivered by courier service, messenger, or facsimile at, or if duly deposited in the mails, by certified or registered mail, postage prepaid -- return receipt requested, to the addresses set

forth in Schedule 2 to the Trust Instrument, or such other addresses as may be furnished hereafter by notice in writing, to the parties to the Master Participation Agreement.

All demands, requests, consents, notices and communications shall be deemed to have been given either (a) at the time of actual delivery thereof or (b) if given by certified or registered mail, five Business Days after certification or registration thereof, to any officer (or an authorized recipient of deliveries to the office) of the party to whom given.

- 6.12 The Master Participation Agreement together with any schedules and exhibits thereto constitutes the entire agreement and understanding between the parties thereto with respect to the subject matter thereof and supersedes all prior agreements, understandings or representations pertaining to the subject matter thereof, whether oral or written. The captions and headings in the Master Participation Agreement are for convenience only and are not intended to be full or accurate descriptions of the contents thereof. They shall not be deemed to be part of the Master Participation Agreement and in no way define, limit, extend or describe the scope or intent of any provisions thereof. If any provision of the Master Participation Agreement or any other agreement or document delivered in connection with the Master Participation Agreement, if any, is partially or completely invalid or unenforceable in any jurisdiction, then that provision shall be ineffective in that jurisdiction to the extent of its invalidity or unenforceability, but the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of the Master Participation Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted, nor shall the invalidity or unenforceability of that provision in one jurisdiction affect its validity or enforceability in any other jurisdiction.

REGISTERED OFFICE OF THE ISSUER

Morgan Stanley Secured Financing LLC

Corporation Trust Center

1209 Orange Street

Wilmington

Delaware 19801

U.S.A.

PRINCIPAL EXECUTIVE OFFICES OF THE GUARANTOR

Morgan Stanley

1585 Broadway

New York, New York 10036

U.S.A.

Tel: +1 (212) 761 4000

ARRANGER AND DEALER

Morgan Stanley & Co. International plc

25 Cabot Square

Canary Wharf

London E14 4QA

TRUSTEE

BNY Mellon Corporate Trustee Services Limited

One Canada Square

London E14 5AL

U.K.

PRINCIPAL PAYING AGENT AND TRANSFER AGENT

The Bank of New York Mellon, London Branch

One Canada Square

London E14 5AL

U.K.

REGISTRAR

The Bank of New York Mellon (Luxembourg) S.A.

Vertigo Building – Polaris

2-4 rue Eugène Ruppert

L-2453

Luxembourg

LEGAL ADVISERS TO THE ISSUER, THE GUARANTOR AND THE TRUSTEE

Allen & Overy LLP

One Bishops Square

London E1 6AD

U.K.

AUDITORS OF THE GUARANTOR

Deloitte & Touche LLP

Deloitte & Touche LLP
Two World Financial Center
New York, New York 10281
U.S.A.

IRISH LISTING AGENT

The Bank of New York Mellon (Ireland) Limited

4th Floor, The Hanover Building
Windmill Lane
Dublin 2
Ireland

ALLEN & OVERY LLP

ICM:14322495.8