

## FURSAN EUROPEAN DISTRESSED DAC

(incorporated in Ireland as a designated activity company limited by shares under company registration number 604584)

### EUR 500,000,000 Note

Fursan European Distressed DAC (the "**Issuer**") issued the note on 20 July 2017 (the "**Issue Date**") with a principal amount of up to EUR 500,000,000 (the "**Note**") to BlueMountain Fursan Fund L.P. (the "**Noteholder**").

Application has been made to the Irish Stock Exchange plc (the "**Irish Stock Exchange**") for approval of these listing particulars (the "**Listing Particulars**"). Application has been made to the Irish Stock Exchange for the Note to be admitted to the official list of the Irish Stock Exchange (the "**Official List**") and trading on the Global Exchange Market of the Irish Stock Exchange. The Global Exchange Market is not a regulated market for the purposes of Directive 2004/39/EC.

This document constitutes listing particulars for the purposes of listing on the Official List and trading on the Global Exchange Market of the Irish Stock Exchange.

These Listing Particulars do not constitute a prospectus for the purposes of Directive 2003/71/EC (as amended by Directive 2010/73/EU) (the "**Prospectus Directive**").

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

The information contained in these Listing Particulars is not and should not be construed as a recommendation by the Issuer that any recipient should purchase the Note. Each such recipient must make and shall be deemed to have made its own independent assessment and investigation of the financial condition, affairs and creditworthiness of the Issuer as it may deem necessary and must base any investment decision upon such independent assessment and investigation and not on these Listing Particulars.

The Note will be an unsecured limited recourse obligation of the Issuer only and will not be an obligation or responsibility of, or guaranteed by, any other person.

The Note is not rated by any rating agency.

A discussion of certain factors which should be considered in connection with an investment in the Note is set out in the section of these Listing Particulars entitled "**Risk Factors**".

These Listing Particulars do not constitute an offer of, or an invitation by or on behalf of, the Issuer to subscribe for or purchase the Note. The distribution of these Listing Particulars and the offering, sale and delivery of the Note in certain jurisdictions may be restricted by law. Persons into whose possession these Listing Particulars come are required by the Issuer to inform themselves about and to observe any such restrictions. For a description of certain restrictions on offers, sales and deliveries of the Note and on distribution of these Listing Particulars and other offering material relating to the Note, see the section of these Listing Particulars entitled "**Selling Restrictions**".

The Issuer does not represent that these Listing Particulars may be lawfully distributed, or that the Note may be lawfully offered, in compliance with any applicable registration or other requirements in any such jurisdiction, or pursuant to an exemption available thereunder, nor does the Issuer assume any responsibility for facilitating any such distribution or offering. In particular, the Issuer has not taken any

action which would permit a public offering of the Note or distribution of these Listing Particulars in any jurisdiction where action for that purpose is required. Accordingly, the Note may not be offered or sold, directly or indirectly, and neither these Listing Particulars 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. Prospective investors should inform themselves as to the legal requirements and tax consequences within their countries of residence and domicile for the acquisition, holding and disposal of the Note.

The Issuer is not and will not be regulated by the Central Bank of Ireland (the “**Central Bank**”) as a result of issuing the Note. Any investment in the Note 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.

The Issuer is a designated activity company limited by shares and accordingly its articles of association prohibit any invitation to the public to subscribe for any shares or debentures of the Issuer. These Listing Particulars do not constitute an invitation to the public within the meaning of the Companies Act 2014 (as amended) (the “**Companies Act**”) to subscribe for the Note.

In these Listing Particulars, unless otherwise specified, references to “€”, “**Euro**” or “**EUR**” are to the lawful currency of the European Union.

These Listing Particulars are dated 11 August 2017.

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## RISK FACTORS

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*An investment in the Note involves certain risks, including risks relating to the investments backing the Note and risks relating to the structure and rights of the Note and the related arrangements. Prospective investors should carefully consider the following factors, in addition to the matters set forth elsewhere in these Listing Particulars prior to investing in the Note.*

### **General**

The purchase of the Note may involve substantial risks and is suitable only for prospective investors who are sophisticated and have the requisite knowledge and experience in financial and business matters necessary to evaluate the risks and merits of investing in the Note, and with sufficient resources to bear any losses which may result from such an investment. Before making an investment decision, a prospective investor should carefully consider, in light of its own financial circumstances and investment objectives, all the information set out in these Listing Particulars and, in particular, the following risk factors, prior to investing in the Note.

The following is not an exhaustive list or explanation of all risks which investors may face when making an investment in the Note and should be used as guidance only. Additional risks and uncertainties relating to the Issuer that are not currently known to the Issuer, or that it currently deems immaterial, may individually or cumulatively also have a material adverse effect on the Issuer's business, prospects, results of operations and financial position and, if any such risk should occur, the value of the Note may decline and investors could lose all or part of their investment. Investors should consider carefully whether an investment in the Note is suitable for them in the light of the information in these Listing Particulars and their personal circumstances.

The Note is designed to be held over the long-term and may not be suitable as a short-term investment. There is no guarantee that any appreciation in the value of the Issuer's investments will occur and investors may not get back the full value of their investment.

Any investment objectives of the Issuer are targets only and should not be treated as assurances or guarantees of performance.

A prospective investor should be aware that the value of an investment in the Issuer is subject to normal market fluctuations and other risks inherent in investing in securities. There is no assurance that any appreciation in the value of the Note will occur or that the investment objective of the Issuer will be achieved. The value of investments and the income derived therefrom may fall as well as rise and investors may not recoup the original amount invested in the Issuer.

The Investment Manager disclaims any responsibility to advise purchasers of the Note of the risks and risk factors associated with the purchase of the Note as they may exist at the date hereof or from time to time hereafter.

The Issuer does not intend to provide post-issuance reporting in respect of the Note.

### **Market Disruptions**

The Issuer may incur substantial losses in the event of disrupted markets or other extraordinary events in which historical pricing relationships (on which the Investment Manager bases a number of its trading positions) become materially distorted. The risk of loss from pricing distortions is compounded by the fact that in disrupted markets many positions become illiquid, making it difficult or impossible to close out positions against which the markets are moving.

The financing available is typically reduced in disrupted markets which could require the Issuer to sell off into a declining market, which would result in substantial losses to the Issuer. Market disruptions may from time to time cause dramatic losses for the Issuer, and such events can result in otherwise historically low-risk strategies performing with unprecedented volatility and risk.

## **Competition**

The securities industry generally, and the varied strategies and techniques to be engaged in by the Investment Manager in particular, are extremely competitive. The Issuer will be competing for investment opportunities against various other investors, including many of the larger securities and investment banking firms, which have substantially greater financial resources and research staffs. Competitive investment activity by other firms may reduce the Issuer's opportunity for profit by reducing or amplifying the magnitude as well as the duration of the market inefficiencies which it seeks to exploit.

## **Investment Risks**

### **Concentration of Investments**

The Issuer may at certain times hold relatively few investments. The Issuer could be subject to significant losses if it holds a large position in a particular investment that declines in value or is otherwise adversely affected.

### **Volatility**

The market value of certain of the Issuer's investments may be volatile, and will generally fluctuate due to a variety of factors that are inherently difficult to predict, including, among other things, the macro business and economic environment, specific developments or trends within a company or in any particular industry, the market's overall perception of risk, general economic conditions, the condition of certain financial markets, domestic and international economic or political events, prevailing credit spreads, changes in prevailing interest rates and the financial condition of counterparties.

### **Liquidity of Investments**

In some circumstances, investments may become relatively illiquid making it difficult to acquire or dispose of them at the prices quoted on the various exchanges. Accordingly, the Issuer's ability to respond to market movements may be impaired and the Issuer may experience adverse price movements upon liquidation of its investments.

In addition, the Issuer may make private investments that are subject to liquidity related risks, particularly the risk that the Issuer will be unable to dispose of such investments by sale or other means at attractive prices or will otherwise be unable to complete any exit strategy. Among others, these risks include changes in the financial condition or prospects of the entity in which the investment is made. It is not generally expected that private securities acquired by the Issuer will eventually be registered and listed on a securities exchange. Absent registration, the Issuer will not be able to sell such securities unless an exemption from such registration requirements is available. In addition, in some cases the Issuer may be prohibited by contract or regulatory restrictions from selling such securities for a period of time. To the extent that there is no liquid trading market for an investment, the Issuer may be unable to liquidate that investment or may be unable to do so at a profit. Moreover, there can be no assurances that private purchasers for the Issuer's investments will be found.

### **Financial Model Risk**

The Issuer's investments and investment strategies may require the use of quantitative and qualitative valuation models developed by the Investment Manager and third-parties. As market dynamics (for example, due to changed market conditions and participants) shift over time, a previously highly successful model often becomes outdated or inaccurate, perhaps without the Investment Manager

recognising the change before significant losses are incurred. The Issuer's model risk extends to the valuation of its investments, most of which will be made on the basis of internal Investment Manager models in the absence of any readily determinable market value. The valuations so determined may differ materially from values that are actually realised.

### **Currency Exposure**

The assets of the Issuer may be invested in securities and other investments which are denominated in currencies other than Euro. Accordingly, the value of such assets may be affected favourably or unfavourably by fluctuations in currency rates. The Investment Manager may seek to hedge the foreign currency exposure of the Issuer. However, the Issuer necessarily is subject to foreign exchange risks. In addition, prospective investors whose assets and liabilities are predominately in other currencies should take into account the potential risk of loss arising from fluctuations in value between the Euro and other currencies.

### **Possible Positive Correlation**

One of the goals in incorporating non-traditional investment strategies such as those to be utilised by the Issuer into a portfolio or series of portfolios is to provide a potentially valuable element of diversification. However, there can be no assurance, particularly during periods of market disruption and stress, when the risk control benefits of diversification may be most important, that the Issuer will, in fact, be negatively- or non-correlated with a traditional portfolio of stocks or bonds.

### **Short Selling**

Short selling involves trading on margin and accordingly can involve greater risk than investments based on a long position. A short sale of a security involves the risk of a theoretically unlimited increase in the market price of the security, which could result in an inability to cover the short position and a theoretically unlimited loss. There can be no assurance that securities necessary to cover a short position will be available for purchase.

### **Fixed Income Obligations**

Fixed income obligations are subject to the risk of an issuer's ability to meet principal and interest payments on the obligation (credit risk), and may also be subject to price volatility due to such factors as interest rate sensitivity, market perception of the creditworthiness of the issuer and general market liquidity (market risk). Changes in interest rates may cause a decline in the market value of an investment. With bonds and other fixed income securities, a rise in interest rates typically causes a fall in values, while a fall in interest rates typically causes a rise in values. Bonds and other fixed income securities generally involve less market risk than stocks. However, the risk of bonds can vary significantly depending upon factors such as the issuer and maturity. For example, the issuer of a security or the counterparty to a contract may default or otherwise become unable to honour a financial obligation. The bonds of some companies may be riskier than the stocks of others.

### **Foreign Securities**

The Issuer may invest in securities and other instruments of foreign corporations and foreign countries. Investing in such securities involves certain considerations including, among other things, political and economic considerations, such as greater risks of expropriation, nationalisation and general social, political and economic instability; the small size of the securities markets in such countries and the low volume of trading, resulting in potential lack of liquidity and in price volatility; fluctuations in the rate of exchange between currencies and costs associated with currency conversion, imposition of withholdings and other taxes and certain government policies that may restrict the Issuer's investment opportunities. In addition, accounting and financial reporting standards that prevail in many foreign countries have varying standards and, consequently, less information may be available to investors in companies located in foreign countries.

## **Asset-Backed Securities**

The Issuer may invest in asset-backed securities including, but not limited to, interests in pools of receivables. These securities may be in the form of pass-through instruments or asset-backed obligations. The securities, many of which are issued by nongovernmental entities and carry no direct or indirect government guarantee, present certain risks primarily because these securities may not have the benefit of a security interest in the related collateral.

## **Convertible Securities**

Convertible securities provide higher yields than the underlying equity securities, but generally offer lower yields than non-convertible securities of similar quality. The value of convertible securities fluctuates in relation to changes in interest rates like bonds and, in addition, fluctuates in relation to the underlying common stock.

## **Derivatives**

Derivative financial instruments include futures, options, interest rate swaps, forward currency contracts and credit derivatives such as credit default swaps. In addition, the Issuer may from time to time utilise both exchange-traded and over-the-counter futures, options and contracts for differences, as part of its investment strategy and for hedging purposes, as well as other derivatives. Regulatory restraints may restrict the instruments that the Issuer may trade. Such derivative instruments are highly volatile, involve certain special risks and expose investors to a high risk of loss. The low initial margin deposits normally required to establish a position in such instruments permit a high degree of leverage. As a result, a relatively small movement in the price of a contract may result in a profit or a loss which is high in proportion to the amount of funds actually placed as initial margin and may result in unquantifiable further losses exceeding any margin deposited. Further, when used for hedging purposes there may be an imperfect correlation between these instruments and the investments or market sectors being hedged.

The trading of over-the-counter derivatives subjects the Issuer to a variety of risks including: (i) counterparty risk, (ii) basis risk, (iii) interest rate risk, (iv) settlement risk, (v) legal risk, and (vi) operational risk. Counterparty risk is the risk that one of the Issuer's counterparties might default on its obligation to pay or perform generally on its obligations. Basis risk is the risk that the normal relationship between two prices might move in opposite directions. Interest rate risk is the general risk associated with movements in interest rates. Settlement risk is the risk that a settlement in a transfer system does not take place as expected. Legal risk is the risk that a transaction proves unenforceable in law or because it has been inadequately documented. Operational risk is the risk of unexpected losses arising from deficiencies in a firm's management information, support and control systems and procedures. Transactions in over-the-counter derivatives may involve other risks as well, as there is no exchange market on which to close out an open position. It may be impossible to liquidate an existing position, to assess the value of a position or to assess the exposure to risk.

## **Leverage**

The Issuer employs leverage for the purpose of making investments and to hedge its exposure to market and credit risk. The use of leverage creates special risks and may significantly increase the Issuer's investment risk. Leverage creates an opportunity for greater yield and total return but, at the same time, increases the Issuer's exposure to capital risk and interest costs.

## **Options**

The Issuer may engage in the trading of options. Such trading involves risks substantially similar to those involved in trading margined securities in that options are speculative and highly leveraged. Specific market movements of the securities underlying an option cannot accurately be predicted. The purchase of an option is subject to the risk of losing the entire purchase price of the option. The writer of an option is subject to the risk of loss resulting from the difference between the premium received for the option and

the price of the security underlying the option which the writer must purchase or deliver upon exercise of the option.

### **Debt Securities**

The Issuer may invest in unrated or low grade debt securities which are subject to greater risk of loss of principal and interest than higher-rated debt securities. The Issuer may invest in debt securities which rank junior to other outstanding securities and obligations of the issuer, all or a significant portion of which may be secured on substantially all of that issuer's assets. The Issuer may invest in debt securities which are not protected by financial covenants or limitations on additional indebtedness. Lower or unrated securities are more likely to react to developments affecting market and credit risk than are more highly rated securities, which primarily react to movements in the general level of interest rates. Investors should be aware that ratings are relative and subjective and are not absolute standards of quality. Subsequent to its purchase by the Issuer, an issue of securities may cease to be rated or its rating may be reduced. Neither event will require sale of such securities by the Issuer, although the Investment Manager will consider such event in its determination of whether the Issuer should continue to hold the securities.

The market value of securities in lower-rated categories is more volatile than that of higher quality securities. In addition, the Issuer may have difficulty disposing of certain of these securities because there may be a thin trading market. The lack of a liquid secondary market for certain securities may have an adverse impact on the Issuer's ability to dispose of such securities and may make it more difficult for the Issuer to obtain accurate market quotations for purposes of valuing the Issuer.

### **Loan Participations and Assignments**

The Issuer may invest in fixed- and floating-rate loans, which investments generally are in the form of loan participations and assignments of portions of such loans. Participations and assignments involve special types of risk, including credit risk, interest rate risk, liquidity risk, and the risks of being a lender. Participations in commercial loans may be secured or unsecured. Loan participations typically represent direct participation in a loan to a corporate borrower, and generally are offered by banks or other financial institutions or lending syndicates. The Issuer may invest in funded term loans through participation and assignments. When purchasing loan participations, the Issuer assumes the credit risk associated with the corporate borrower and may assume the credit risk associated with an interposed bank or other financial intermediary, and may only be able to enforce its rights through the lender, and may assume the credit risk of the lender in addition to the borrower. The participation interests in which the Issuer invests may not be rated by any nationally recognised rating service. Investments in loans through a direct assignment of a financial institution's interests with respect to the loan may involve additional risks to the Issuer. For example, if a loan is foreclosed, the Issuer could become part owner of any collateral, and would bear the costs and liabilities associated with owning and disposing of the collateral. In addition, it is conceivable that, under emerging legal theories of lender liability, the Issuer could be held liable as a co-lender. It is unclear whether loans and other forms of direct indebtedness offer securities laws protections against fraud and misrepresentation. In the absence of definitive regulatory guidance, the Issuer relies on the Investment Manager's research in an attempt to avoid situations where fraud or misrepresentation could adversely affect the Issuer.

### **Spread Trading Risks**

A part of the Issuer's trading operations may involve spreads between two or more positions. To the extent the price relationships between such positions remain constant, no gain or loss on the positions will occur. In addition, such positions entail substantial risk that the price differential could change unfavorably, causing a loss to the spread position. In periods of trendless, stagnant markets and/or deflation, many alternative investment strategies have materially diminished prospects for profitability.

### **Arbitrage Transaction Risks**



Arbitrage strategies attempt to take advantage of perceived price discrepancies of identical or similar financial instruments, on different markets or in different forms. The Investment Manager may employ any one or more of these arbitrage strategies. If the requisite elements of an arbitrage strategy are not properly analysed, or unexpected events or price movements intervene, losses can occur which can be magnified to the extent the Issuer is employing leverage. Moreover, arbitrage strategies often depend upon identifying favourable “**spreads**,” which can also be identified, reduced or eliminated by other market participants.

## **Hedging Transactions**

The success of the Issuer’s hedging strategy is subject to the Investment Manager’s ability to correctly assess the degree of correlation between the performance of the instruments used in the hedging strategy and the performance of the investments in the portfolio being hedged. Since the characteristics of many securities change as markets change or time passes, the success of the Issuer’s hedging strategy is also subject to the Investment Manager’s ability to continually recalculate, readjust, and execute hedges in an efficient and timely manner.

While the Issuer may enter into hedging transactions to seek to reduce risk, such transactions may result in a poorer overall performance for the Issuer than if it had not engaged in any such hedging transactions. For a variety of reasons, the Investment Manager may not seek to establish a perfect correlation between such hedging instruments and the risks being hedged. Such imperfect correlation may prevent the Issuer from achieving the intended hedge or expose the Issuer to risk of loss. In addition, the Investment Manager may not hedge a risk inherent in the Issuer because a hedge may not be available or is too costly in light of the likelihood of the possible risk actually occurring or because the risk simply could not be reasonably anticipated.

## **Equity Investments**

The Issuer’s investment portfolio may include long and short positions in equity securities of U.S. and non-U.S. listed companies. Equity securities fluctuate in value in response to many factors, including, among others, the activities and financial condition of individual companies, the business market in which individual companies compete, industry market conditions, interest rates and general economic environments. In addition, events such as the domestic and international political environments, terrorism and natural disasters, may be unforeseeable and contribute to market volatility in ways that may adversely affect the Issuer. The Investment Manager may also seek to challenge the management of a portfolio company through a proxy contest. Such litigation or a proxy contest may result in substantial expense to the Issuer. In addition, senior personnel of the Investment Manager may serve on the board of directors of one or more companies in which the Issuer invests. As a result, the Investment Manager will obtain access to material non-public information affecting the portfolio company, which may preclude the Issuer from selling its position (or acquiring additional shares) at a time when the Investment Manager otherwise believes it would be appropriate to do so. Moreover, the Issuer’s ability to realise value from certain of its investments may depend upon the ability of the Investment Manager to influence the management of a portfolio company to take certain actions, including, for example, a recapitalisation, restructuring, spin off, sale of the business or change in management. If the Investment Manager is incorrect in its assessment of the impact such action will have on the value of a portfolio company, or if it is unsuccessful in persuading the portfolio company’s management to take the desired action, the Issuer may sustain a loss on its investment in the portfolio company, adversely affecting the Issuer.

## **Structural Subordination of Equity Interests**

The Issuer may hold equity interests in special purpose vehicles (each, an “**SPV**”), in some cases alongside affiliates or third party investors. In connection with such investments, the equity interests held by the Issuer may not be secured by the assets of the SPVs, and the Issuer will rank behind all known or unknown creditors, whether secured or unsecured, of the SPVs. No person or entity other than the SPV will be required to make any distributions on the equity interests, and payments from the SPV on its common or preferred shares or other equity interests will be subordinate to payments on its debt.

Therefore, to the extent that any losses are incurred by the SPV in respect of any collateral, such losses will be borne first by the Issuer and its co-investors as holders of common or preferred shares or other equity interests.

### **Cross-Class Liabilities in Connection with Equity Investments**

The Issuer may invest in SPVs alongside affiliates or third party investors, where such investors hold different classes or series of equity interests that correspond to separate underlying investments. However, in most cases, the SPV will be a single legal entity and there will be no limited recourse protection for any class or series. Accordingly, all of the assets of the SPV will be available to meet all of its liabilities regardless of the class or series to which such assets or liabilities are attributable. In practice, cross-class or cross-series liability is only expected to arise where liabilities referable to one class or series are in excess of the assets referable to such class or series and it is unable to meet all liabilities attributed to it. In such a case, the assets of the SPV attributable to other classes or series may be applied to cover such liability excess and the value of the contributing classes or series will be reduced as a result.

### **Risk of Early Stage Companies**

The Issuer may invest in companies at an early stage of development, which involves a high degree of business and financial risk. Early-stage companies with little or no operating history may require substantial additional capital to support expansion or to achieve or maintain a competitive position, may produce substantial variations in operating results from period to period or may operate at a loss. Such companies may face intense competition, including competition from companies with greater financial resources, more extensive development, marketing and service capabilities, and a larger number of qualified management and technical personnel. Such risks may adversely affect the performance of such investments and result in substantial losses.

### **Reliance on Corporate Management and Financial Reporting**

The Investment Manager relies on the financial information made available by the issuers in which the Issuer invests. The Investment Manager typically does not independently verify the financial information disseminated by the numerous issuers in which the Issuer may invest and is dependent upon the integrity of both the management of these issuers and the financial reporting process in general. Corporate mismanagement, fraud and accounting irregularities relating to the issuers of investments held by the Issuer may result in material losses. Equity prices are particularly vulnerable to corporate mismanagement.

### ***Institutional Risk***

Institutions, such as brokerage firms or banks, will have custody of a portion of the Issuer's assets. These assets will often be registered in "street name" and not in the Issuer's name. Bankruptcy or fraud at one of these institutions could impair the operational capabilities or the capital position of the Issuer. The Issuer will attempt to concentrate its investment transactions with well-capitalised and established banks and brokerage firms in an effort to mitigate such risks.

### ***Systemic Risk***

Credit risk may also arise through a default by one of several large institutions that are dependent on one another to meet their liquidity or operational needs, so that a default by one institution causes a series of defaults by the other institutions. This is sometimes referred to as a "systemic risk" and may adversely affect financial intermediaries, such as clearing agencies, clearing houses, banks, securities firms and exchanges, with which the Issuer will interact on a daily basis.

### ***Ability to Enforce Legal Rights***

Because the effectiveness of the judicial systems in certain countries in which the Issuer may invest varies, the Issuer may have difficulty in successfully pursuing claims in the courts of such countries as compared to developed countries. Furthermore, to the extent the Issuer may obtain a judgment but is required to seek its enforcement in the courts of one of the countries in which the Issuer invests, there can be no assurance that such courts will enforce such judgment.

### **Counterparty Risk**

The Issuer is subject to the risk of the inability of any counterparty to perform with respect to transactions, whether due to insolvency, bankruptcy or other causes. The stability and liquidity of swap transactions, forward transactions and other over-the-counter derivative transactions depend in large part on the creditworthiness of the parties to the transactions. It is expected that the Investment Manager will monitor on an ongoing basis the creditworthiness of firms with which it will enter into swaps or other over-the-counter derivatives on behalf of the Issuer. If there is a default by the counterparty to such a transaction, the Issuer will under most normal circumstances have contractual remedies pursuant to the agreements related to the transaction. However, exercising such contractual rights may involve delays or costs which could result in losses. Furthermore, there is a risk that any of such counterparties could become insolvent. If one or more of the Issuer's counterparties were to become insolvent or the subject of liquidation proceedings there exists the risk that the recovery of that portion of the Issuer's portfolio held will be delayed or be of a value less than the. In addition, the Issuer uses counterparties located in various jurisdictions. Such local counterparties are subject to various laws and regulations in various jurisdictions that are designed to protect their customers in the event of their insolvency. However, the practical effect of these laws and their application to the Issuer's assets are subject to substantial limitations and uncertainties. Because of the large number of entities and jurisdictions involved and the range of possible factual scenarios involving the insolvency of a counterparty, it is impossible to generalise about the effect of their insolvency on the Issuer and its assets. Investors should assume that the insolvency of any counterparty would result in a loss to the Issuer which could be material.

### **Transaction Costs**

The Issuer's investment approach may involve a high level of trading and turnover of the Issuer's investments which may generate substantial transaction costs.

### **Litigation**

From time to time, in the ordinary course of their operations, the Investment Manager and its affiliates may be subject to litigation and arbitration, which can be costly and divert significant portions of available Investment Manager staff time and resources. In addition, it is possible that the Investment Manager may use litigation as part of an investment tactic. The Issuer could be party to lawsuits either initiated by it, or by a company in which the Issuer invests, other shareholders, or state, federal and foreign governmental bodies. There can be no assurance that any such litigation, once begun, would be resolved in favour of the Issuer. Any litigation or arbitration could have a materially adverse effect on the Issuer.

### **Exposure to Material Non-Public Information**

From time to time, the Investment Manager may receive material non-public information with respect to an issuer of publicly traded securities. In such circumstances, the Issuer may be prohibited, by law, policy or contract, for a period of time from (i) unwinding a position in such issuer, (ii) establishing an initial position or taking any greater position in such issuer, and (iii) pursuing other investment opportunities related to such issuer.

### **Management**

#### **Reliance on Management**

Except as otherwise provided herein, investors do not have an opportunity to select or evaluate any Issuer investments, or to review the Issuer's securities and other investment positions. The Investment Manager selects all Issuer investments and the quality of its decisions dictates the Issuer's success or failure. In addition, the business and prospects of the Investment Manager (and by extension the Issuer) might be materially and adversely affected by the death or incapacity of any senior personnel of the Investment Manager. Further, if the Issuer and other investment funds and account managed by the Investment Manager were to incur substantial losses, the revenues of the Investment Manager may decline substantially. Such losses may impair the Investment Manager's ability to retain employees, provide the same level of service to the Issuer and continue operations.

### **Reliance on Certain Third Parties**

The Issuer is dependent upon its counterparties and certain service providers, such as the Corporate Service Provider and Investment Manager. Errors are inherent in the operations of any business (including the Issuer), and although the Investment Manager has adopted measures intended to prevent and detect errors by, and misconduct of, counterparties and service providers, and to transact with counterparties and service providers it believes to be reliable, such measures may not be effective in all cases. Errors or misconduct by such service providers could have a material adverse effect on the Issuer.

### **Incentive Fees of Service Providers and Third-Party Managers**

Service providers and managers of SPVs through which the Issuer may invest ("**Third-Party Managers**") may receive compensation based on, among other things, the performance of the assets that they service or in which such SPVs invest. Therefore, it is possible that certain service providers or Third-Party Managers may receive incentive compensation from the Issuer. Such compensation arrangements may create an incentive to make investments that are riskier or more speculative than would be the case if such arrangements were not in effect.

Third-Party Managers may also receive compensation from investments in the form of transaction, director, monitor and other similar fees or in connection with any investment not completed (e.g., break-up fees). The Issuer may be responsible for the payment of such transaction fees and conflicts of interest may arise in connection with the payment of such transaction fees.

### **Affiliates and Other Third Party Investors**

The Issuer may co-invest initially in a particular loan, security or other investment at substantially the same time as other affiliates, in which case they would invest at substantially the same price. Though the Issuer may often invest in tandem with affiliates, they will not necessarily invest through the same Trading Entities or use the same counterparties. This may result in differences in price, terms and amount of leverage (if any), and associated transaction costs. In addition, there can be no assurance that the Issuer would dispose of such an investment at substantially the same price or time as other affiliates due to many factors that may or may not be foreseeable at the time of investment, including availability of capital for follow-on investment and other needs, differing basis in the investment, differing financing terms applicable to different investments, time horizons applicable to different affiliates and their differing investment objectives and investment programs. Further, to the extent the affiliates are required to liquidate their interest in such investments to meet liquidity demands of its investors, such liquidation may have an adverse effect on the market value of the underlying investment. In addition, the Issuer may co-invest with third parties that are not affiliates through joint ventures or other SPVs. Such investments may involve risks not present in investments where a third party is not involved, including the possibility that a co-venturer or partner of the Issuer may at any time have economic or business interests or goals which are inconsistent with those of the Issuer, or may be in a position to take action contrary to the Issuer's investment objectives. In addition, the Issuer may in certain circumstances be liable for actions of its co-venturers or partners. Furthermore, if a co-venturer defaults on its funding obligations, the Issuer may be required to make up the shortfall. Investments made with third parties in partnerships, joint ventures or other SPVs may involve carried interest and/or other fees payable to such third-party co-venturers or partners. In those circumstances where such third parties involve a management group, such third parties

may receive compensation arrangements relating to such investments, including incentive compensation arrangements.

Finally, the Issuer may co-invest with affiliates in portfolio companies, including (by way of example and without limitation) loan servicing, appraisal, consulting and management firms, that in turn provide financial services to the Issuer and/or one or more affiliates or investments held by such funds. Such portfolio companies may also provide financial services to the Issuer or investments held by the Issuer, even though the Issuer has no investment in such portfolio company. In either event, while the Investment Manager's investment allocation procedures are intended to ensure that investment opportunities are allocated on a fair and equitable basis between various accounts it advises, one or more affiliates may receive a greater incremental benefit by virtue of their investment in such a portfolio company than the Issuer as a result of services performed by such portfolio company on behalf of the Issuer or other affiliates or investments held by such funds.

### **Investing in Pre-Existing Investments**

The Issuer may invest in entities or assets in which other affiliates hold an investment, and conversely such affiliates may invest in entities or assets in which the Issuer holds an investment. Such transactions may have an effect (positive or negative) on the market price of such investment. In circumstances in which the Issuer makes an investment in an entity in which other affiliates have a pre-existing investment, the Issuer would be expected to make business decisions relating to such investment (such as, for example, financing or hedging interest rate or currency risk) independently of the analogous decisions made with respect to such investment by such other affiliates. This may result in situations where the Issuer may choose not to hedge certain risks that other affiliates do hedge, or the possibility that the Issuer is exposed to risks of financing (for example, possible margin calls) on an investment when other affiliates are not.

### **Dissolution Risks**

The Issuer may be required to liquidate its investments pursuant to the liquidity rights of its investors. In the case of a dissolution of the Issuer, dissolution may require the selling of the Issuer's investments under circumstances which may negatively affect the Issuer's returns. Where another affiliate is liquidated pursuant to its dissolution provisions, this may also negatively affect the value of the Issuer's investments.

### **Limitation of Investment Manager's Liability and Indemnification of the Investment Manager**

The Investment Management Agreement includes exculpation and indemnification provisions that limit the Investment Manager's potential liability to the Issuer as well as third parties.

### **Lack of Separate Representation**

Neither the Investment Management Agreement nor any of the agreements, contracts and arrangements between the Issuer, on the one hand, and the Investment Manager, or its affiliates, on the other hand, were or will be the result of arm's-length negotiations. The attorneys, accountants and others who have performed services for the Issuer in connection with this offering, and who may continue to perform services for the Issuer in the future, have been and will be selected by persons affiliated with the Investment Manager.

### **Systems Risks**

The Investment Manager relies extensively on computer programs and systems (and may rely on new systems and technology in the future) in connection with the Issuer's investment activities, including, without limitation, to trade, clear and settle securities transactions, to evaluate certain investments based on real-time information, to engage in automated trading, to monitor the Issuer's portfolio and net capital, and to generate risk management and other reports that are critical to oversight of the Issuer's activities. In addition, certain of the Issuer's, the Investment Manager's and their affiliates' operations interface with

or depend on systems operated by third-parties, the Administrator and market counterparties and their sub-custodians and other service providers, and the Investment Manager may not be in a position to verify the risks or reliability of such third-party systems. These programs or systems may be subject to certain defects, failures, interruptions or security breaches, including, but not limited to, those caused by computer “worms,” viruses, power failures and social engineering schemes such as “phishing”. The Investment Manager’s operations are highly dependent on each of these systems and the successful operation of such systems is often out of the Investment Manager’s control. Any such defect or failure could have a material adverse effect on the Issuer, the Investment Manager and their affiliates. For example, systems failures could cause settlement of trades to fail, lead to inaccurate accounting, recording or processing of trades, and cause inaccurate reports, which may affect the ability of the Investment Manager to accurately monitor the Issuer’s investment portfolios and risks.

### **Automated Trading Systems**

The Investment Manager may implement investment strategies through automated trading programs. These automated trading programs execute trades by issuing and cancelling electronic orders, all without the direct approval of any person. Although the Investment Manager has implemented software risk management systems, there can be no guarantee that the Investment Manager’s software systems are error free. Potential flaws in these software systems include but are not limited to flaws in design, implementation, configuration, communication, testing, compiling, or linking. These potential flaws create a risk that one or more automated trading programs could trade out of control, possibly subjecting the Issuer to a material loss of capital. Furthermore, because of the rapid speed of these automated trading programs, such losses could occur in a very short period of time.

### **Handling of Mail**

Mail addressed to the Issuer and received at its registered office may be forwarded unopened to the forwarding address supplied by the Investment Manager to be dealt with. None of the Issuer, its directors, officers, advisors or service providers will bear any responsibility for any delay howsoever caused in mail reaching the forwarding address. In particular the Directors may only receive, open or deal directly with mail which is addressed to them personally (as opposed to mail which is addressed just to the Issuer).

## **RISKS RELATING TO THE ISSUER**

### **Lack of Operating History**

The Issuer is a newly incorporated designated activity company limited by shares under Irish law that has no prior operating history or revenues upon which may be used to evaluate its likely performance. As a consequence potential investors have no basis on which to evaluate the Issuer’s ability to achieve its investment objective.

### **Reliance on the Board of Directors**

The board of directors of the Issuer (the “**Board of Directors**”) will have overall supervision and control over the business affairs of the Issuer and retaining the Investment Manager which the Issuer has appointed to provide investment management services pursuant to the Investment Management Agreement. The Board of Directors, however, will be obliged to devote only such time to the Issuer’s affairs as may be reasonably necessary to conduct its business.

### **No participation by the Noteholder in the management or control of the Issuer**

The Noteholder’s interest in the Issuer is limited solely to its interest in the Note. The Noteholder will have no right or power to participate in the management or control of the business of the Issuer. The Noteholder will have no right or power to control the day-to-day operation of the Issuer.

### **Listing and Illiquidity of the Note**

It is expected that the Note to be issued by the Issuer will be listed on the Global Exchange Market of the Irish Stock Exchange. However, there can be no assurance that the Note will be listed or that such listing will be able to be maintained at all relevant times. Moreover, no secondary market is expected to develop in respect of the Note.

### ***Non-reliance***

The Noteholder who purchases the Note will be deemed to have represented and agreed that it (i) has the knowledge and sophistication independently to appraise and understand the financial and legal terms and conditions of the Note and to assume the economic consequences and risks thereof; (ii) to the extent necessary, has consulted with its own independent financial, legal, accounting, regulatory or other advisers and has made its own investment, hedging and trading decisions in connection with the Note based upon its own judgement and the advice of such advisers and not upon any view expressed by the Issuer; (iii) is capable of bearing the economic risk of an investment in the Note for an indefinite period of time; (iv) is acquiring the Note for its own account (or, if it is acquiring the Note in a fiduciary capacity, for the account of their beneficiaries) for investment, not with a view to resale, distribution or other disposition of the Note (subject to any applicable law requiring that the disposition of the investor's property be within its control); and (v) recognises that it may not be possible to dispose of the Note for a substantial period of time, if at all.

### ***Irish insolvency laws***

The following is a brief summary of certain provisions of Irish insolvency law. The summary does not purport to be a comprehensive description of all Irish insolvency law considerations which may be relevant should the Issuer get into financial difficulty. The Issuer is incorporated under the laws of Ireland and has its registered office in Ireland.

Article 3(1) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings (recast) (the "**EU Insolvency Regulation**") is in force in Ireland since 26 June 2017 and applies to "insolvency proceedings" opened after 26 June 2017. Article 3(1) of the EU Insolvency Regulation provides that the centre of main interests ("**COMI**") shall be "the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties" and in the case of a company, such as the Issuer, the place of the registered office shall be presumed to be the COMI in the absence of proof to the contrary and provided that the registered office has not been moved from another Member State within the three month period prior to the request for the opening of "insolvency proceedings".

In the decision by the Court of Justice of the European Union ("**CJEU**") in relation to Eurofood IFSC Limited, the CJEU restated the presumption in Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings, that the place of a company's registered office is presumed to be the company's COMI and stated that the presumption can only be rebutted if "factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exists which is different from that which locating it at the registered office is deemed to reflect". This is consistent with Recital 30 to the EU Insolvency Regulation.

Recital 28 to the EU Insolvency Regulation further indicates that in assessing whether a company's centre of main interests is ascertainable to third parties for these purposes, "special consideration should be given to the creditors and to their perception as to where a debtor conducts the administration of its interests". As the Issuer has its registered office in Ireland, has not moved its registered office from another Member State to Ireland within the three month period prior to a request for the opening of "insolvency proceedings", has an Irish corporate services provider, has Irish directors and is registered for tax in Ireland, the Issuer does not believe that factors exist that would rebut this presumption, although this would ultimately be a matter for the relevant court to decide, based on the circumstances existing at the time when it was asked to make that decision. If the Issuer's COMI is not located in Ireland, and is held to be in a different jurisdiction within the European Union, main insolvency proceedings may not be opened in Ireland.

Accordingly, pursuant to Article 3 of the EU Insolvency Regulation and as the Issuer is an Irish incorporated company and has its registered office in Ireland there is a rebuttable presumption that the Issuer's COMI is in Ireland and consequently that any main insolvency proceedings applicable to it would be governed by Irish law

Under Irish insolvency law, if the Issuer goes into liquidation, a liquidator may apply to the court to have certain transactions disclaimed if the related contract amounted to a fraudulent preference. In circumstances where the Issuer or a company related to the Issuer is or is likely to be unable to pay its debts, an examiner could be appointed to the Issuer pursuant to Irish insolvency laws to facilitate the survival of the Issuer as a going concern. If, under the laws of Ireland, an examiner were appointed to the Issuer, then the Noteholder could be exposed to certain risks, including the risk that: (i) there may be a delay in enforcing payment obligations of the Issuer; (ii) a compromise or scheme of arrangement (which an examiner would formulate for the purposes of assisting the survival of the Issuer) may, if approved by a court, involve the writing down or rescheduling of the debt due by the Issuer to the Noteholder; and (iii) in the event that a scheme of arrangement is not approved by the court and the Issuer subsequently goes into liquidation, the examiner's remuneration and expenses (including certain borrowings incurred by the examiner on behalf of the Issuer and approved by a court) will take priority over the monies and liabilities which from time to time are or may become due, owing or payable to the Noteholder in respect of the Note.

### ***Taxation position of the Issuer***

The Issuer expects that it will be a '*qualifying company*' for the purposes of section 110 of the Taxes Consolidation Act 1997 (as amended) of Ireland ("**Section 110**"). As a result, it is anticipated that the Issuer should be subject to Irish corporation tax only on its profit calculated under generally accepted accounting practice, after deducting all of its revenue expenses (including interest payable to the Noteholder in respect of the Note). If, for any reason, the Issuer is not or ceases to be such a '*qualifying company*' for the purposes of Section 110, the Issuer could be obliged to account for Irish tax in respect of profits for Irish tax purposes, which are in excess of profit calculated under generally accepted accounting practice. This could result in material tax being payable in Ireland which has not been contemplated in the cash flows in respect of the Note issued to the Noteholder. In such circumstances, the Irish tax treatment of both the Issuer and payments by Issuer in respect of the Note could be adversely affected. In turn, this may have a material adverse effect on the amounts available for distribution to the Noteholders.

### ***The Issuer may be subject to taxation***

The Issuer may be subject to withholding, capital gains or other taxes on income and/or gains arising from its investment portfolio, including without limitation taxes imposed by the jurisdiction in which the obligor in respect of any assets held by the Issuer is incorporated, established or resident for tax purposes. The Issuer may also incur or bear transaction or other similar taxes in respect of the actual or notional amount of any acquisition, disposal or transaction relating to its investment portfolio, including without limitation taxes imposed by the jurisdiction in which the issuer of securities held by the Issuer or the counterparty to a transaction involving the Issuer is incorporated, established or resident for tax purposes. Where the Issuer invests in loans, securities or enters into transactions that are not subject to withholding or other taxes at the time of acquisition, there can be no assurance that tax may not be withheld or imposed in the future as a result of any change in applicable laws, treaties, rules or regulations or the interpretation thereof.

### ***Anti-Tax Avoidance Directive***

The Anti-Tax Avoidance Directive ("**ATAD**") was adopted as Council Directive (EU) 2016/1164 on 12 July 2016 and must be implemented by all European Union Member States by 1 January 2019. When implemented, it is possible that the ATAD may affect the tax treatment of the Issuer and / or the Note. However, in the absence of implementing legislation, the possible implications of the ATAD are unascertainable.



### ***Changes in taxation legislation or practice may adversely affect the Issuer***

Changes in tax legislation or practice, whether in Ireland or in jurisdictions in which the Issuer invests, could affect the value of the investments held by the Issuer, affect the Issuer ability to make payments of principal and/or interest on the Note.

### **Not an offer to the public**

The Issuer is a designated activity company limited by shares incorporated under the laws of Ireland and, accordingly, is prohibited from making any invitation to the public to subscribe for, or any offer to the public of, the Issuer Shares or the Note. Neither these Listing Particulars nor any other document constitutes an offer to purchase, or an invitation to the public by or on behalf of the Issuer to subscribe for, the Note.

### **The Note is not capital protected**

The Note is not a capital guaranteed product. In addition, the obligations of the Issuer under the Note will not be obligations or responsibilities of, or guaranteed by, any other person or entity. In this regard, the Noteholder could lose the entire principal amount advanced to the Issuer in respect of the Note. This, in turn, could potentially have a material adverse effect on the amounts available for distribution.

### **Limited recourse nature of the Note**

The Note shall comprise a direct, unsecured, limited recourse obligation of the Issuer, which shall be payable solely from the assets of the Issuer only. The proceeds of realisation of such assets may be less than the sums due by the Issuer to the Noteholder in respect of the Note, and to any other creditors of the Issuer. Any shortfall shall be borne by the Noteholder and any other creditors of the Issuer. The Noteholder shall not be entitled at any time to bring, institute or join with any other person in bringing, instituting or joining, insolvency, bankruptcy, winding up, examinership or any other analogous proceedings (whether court based or otherwise) against the Issuer, the Board of Directors or any of its officers, members or agents.

### **No regulation of the Issuer by any regulatory authority**

The Issuer is not required to be licensed or authorised under any current securities, commodities, insurance or banking laws of its jurisdiction of incorporation. In particular, the Issuer is not and will not be regulated by the Central Bank as a result of issuing the Note. Any investment in the Note 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.

### ***The Note is subordinate to Senior Obligations***

The Note is as a limited recourse unsecured definitive registered note and is fully subordinated to and rank behind the Senior Obligations and any secured debt, if any, of the Issuer. The Note shall rank *pari passu* equally and rateably without discrimination or preference with any other unsecured notes or other unsecured debt obligations (howsoever described) issued or entered into by the Issuer.

### **The Issuer has no employees and is reliant on the performance of third party service providers**

The Issuer has no employees. Whilst the Issuer has taken all reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations, the Issuer is reliant upon the performance of third party service providers for its executive function. In particular the Investment Manager and the Corporate Service Provider perform services which are integral to the operation of the Issuer. Failure by any service provider to carry out its obligations (where applicable) to the Issuer in accordance with the terms of its appointment could have a materially detrimental impact on the operation of the Issuer.

Investor returns are dependent upon the Issuer successfully pursuing its investment policy. The success of the Issuer depends, inter alia, on the Investment Manager's ability to identify, acquire and realise investments in accordance with the Issuer's investment policy. This, in turn, depends on the ability of the Investment Manager to apply their investment processes in a way which is capable of identifying suitable investments for the Issuer to invest in. There can be no assurance that the Investment Manager will be able to do so or that the Issuer will be able to invest its assets on attractive terms or generate any investment returns for Investors or avoid investment losses.

### ***Exposure to credit risk of the Account Bank***

As of the Issue Date, the primary credit risk of the Note is that of the Account Bank as the net proceeds of issuance of the Note will be deposited into the Issuer's bank account and therefore principal and interest payable on the Note will be subject to the credit risk of the Account Bank. Investors should therefore understand and evaluate such credit risk prior to making any investment and should conduct such independent investigation and analysis regarding the Account Bank as they deem appropriate to evaluate the merits and risks of an investment in the Note.

For further information in respect of the Account Bank, please see the section of these Listing Particulars entitled "***Description of the Transaction Parties***".

### ***Limited liquidity of the Note***

There is not at present an active and liquid secondary market for the Note. There can be no assurance that a secondary market for the Note will develop, or, if a secondary market does develop, that it will provide the holder of the Note with liquidity or that it will continue for the entire life of the Note. This may leave the Noteholder with an illiquid investment. Illiquidity means that the Noteholder may not be able to realise its anticipated yield. Illiquidity can obviously have an adverse effect on the market value of the Note. Consequently, any purchaser of the Note must be prepared to hold the Note until final redemption or maturity of the Note.

The Note is not rated.

### ***Taxation***

The Noteholder will assume and be solely responsible for any and all taxes of any jurisdiction or governmental or regulatory authority, including, without limitation, any state or local taxes or other like assessment or charges that may be applicable to it, by reason of holding the Note, or to any payment to it in respect of the Note. The Noteholder should inform itself as to the tax consequences applicable to it of the acquisition, holding or disposal of the Note.

### ***No Trustee***

As the Note is an unsecured limited recourse obligation of the Issuer, a note trustee will not be appointed in respect of the Note. The Issuer is of the view that there are adequate measures in place to ensure that the interests of the Noteholder are at all times represented to its satisfaction and that it receives all relevant information pertaining to the performance of the Investments and the Note.

*The investment considerations set out above are not, and are not intended to be, a comprehensive or exhaustive list of (i) all considerations relevant to a decision to purchase or hold the Note and (ii) all potential risks in connection with any investment in the Note. Such risks are to be identified and considered by each prospective investor on an individual basis.*

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## OVERVIEW

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*The information in this section is an overview of the transaction described in these Listing Particulars. This overview constitutes an introduction and should be read in conjunction with and is qualified in its entirety by reference to the more detailed information appearing or referred to elsewhere in these Listing Particulars. Summaries of documents and agreements herein are qualified by reference to the full text of each document and agreement. For a discussion of certain factors to be considered in connection with an investment in the Note, see "**Risk Factors**".*

**Issuer:** Fursan European Distressed DAC, a designated activity company limited by shares incorporated in Ireland under company registration number 604584, whose registered office is at 32 Molesworth Street, Dublin 2, Ireland. The Issuer was incorporated on 23 May 2017.

**Note:** EUR 500,000,000 Note issued by the Issuer on 20 July 2017.

**Issue price:** 100% (one hundred per cent.).

**Principal Amount**

**Outstanding:** The Principal Amount Outstanding of the Note on the Issue Date was EUR 10,000,000.

**Noteholder:** BlueMountain Fursan Fund L.P..

**Investment Manager:** BlueMountain Capital Management, LLC.

**Listing Agent:** Matheson.

**Account Bank:** The Bank of New York Mellon Corporation.

**Paying Agent:** BlueMountain Capital Management, LLC.

**Registrar:** Maples Fiduciary Services (Ireland) Limited.

**Corporate Services Provider:** Maples Fiduciary Services (Ireland) Limited.

**Transaction Documents:** The Corporate Services Agreement.

The Investment Management Agreement.

The Note.

The Note Subscription Agreement.

See the section of these Listing Particulars entitled "**Description of the Material Transaction Documents**" for a summary description of certain material documents listed above.

**Investment Objective:** In accordance with the terms of the Investment Management Agreement the Investment Objective of the Issuer is to generate attractive returns payable on the Notes issued by the Issuer.

<b>Investment Strategy:</b>	The Issuer proposes to pursue its Investment Objective by way of investing in a wide range of equity and credit market instruments and other asset classes.
<b>Investments:</b>	In accordance with the terms of the Investment Management Agreement, the Investment Manager is empowered to invest for the account of the Issuer in cash and synthetic credit assets (including, but not limited to, bonds, loans, asset backed securities, single name CDS, cash CLOs, cash CDOs and other asset-backed securities) as well as equities, futures, options, options on futures, over-the-counter derivatives, total return swaps on securities of issuers, corporate and convertible bonds, warrants, loans (both publicly and privately traded, including private non-recourse loans supported by publicly traded collateral or project financings), and other instruments evidencing debt; provided that any investment is a “qualifying asset” for the purposes of Section 110.
<b>Legal jurisdiction by which the assets are governed:</b>	<p>There are no restrictions on the governing law that may apply to the assets.</p> <p>The assets have been and will be originated in one or more transactions that in all material respects were and will be in accordance with and in compliance with all applicable local laws, rules and regulations applicable to the relevant assets and original transactions.</p>
<b>The expiry or maturity date(s) of the assets:</b>	The Note will at all times be collateralised by the assets and the maturity and / or liquidity of the assets will be appropriate taking account of the Redemption Date of the Note.
<b>Status of Note:</b>	The Note shall be issued as a limited recourse unsecured definitive registered note and shall be fully subordinated to and rank behind the Senior Obligations (being any and all amounts that are due and payable by the Issuer, from time to time, other than payments of principal and interest to the Noteholder in respect of the Note). The Note shall rank <i>pari passu</i> equally and rateably without discrimination or preference with any other unsecured notes or other unsecured debt obligations (howsoever described) issued or entered into by the Issuer.
<b>Currency:</b>	The Note is denominated in EUR.
<b>Denomination:</b>	The minimum principal denomination of the Note shall be EUR 100,000.
<b>Form of Note:</b>	Definitive registered form.
<b>Redemption Date:</b>	31 December 2045 or, if earlier, the date on which the Note is redeemed in full in accordance with the Conditions.
<b>Advances:</b>	In accordance with the Conditions, the Issuer may request the Noteholder to make further advances of principal under the Note to the Issuer, provided that the minimum advance requested by the Issuer will be EUR 1. Whenever the Issuer desires to receive advances of additional principal amounts under the Note, it or the Investment Manager (on its behalf) will deliver to the Noteholder an advance notice not later than 10.00 am (Dublin time) five Business Days (or such lesser period as the Issuer and the Noteholder may mutually agree) before the date of the proposed

Advance specifying the date and amount of the additional principal amount that the Issuer or the Investment Manager (on its behalf) requests to be advanced by the Noteholder.

The Noteholder will advance such additional principal amount requested by the Issuer or the Investment Manager (on its behalf) pursuant to the Conditions in immediately available funds to such account, and on such date, as may be designated in an advance notice. The Issuer or the Investment Manager (on its behalf) may not issue an advance notice to the Noteholder pursuant to the Conditions if the additional principal amount requested in that advance notice would, if advanced by the Noteholder, result in the Principal Amount Outstanding in respect of the Note exceeding the Maximum Principal Amount.

**Maximum Principal Amount:** EUR 500,000,000.

**Limited Recourse:** The Note is a limited recourse unsecured registered obligation of the Issuer, is fully subordinated to and ranks behind the Senior Obligations and shall rank *pari passu* equally and rateably without discrimination or preference with any other notes or debt obligations (howsoever described) issued or entered into by the Issuer.

The obligations of the Issuer to the Noteholder are limited recourse obligations payable solely from the Portfolio after payment of all Senior Obligations, payments and claims which rank in priority to payments to the Noteholder under the Note. No recourse shall be had against any former, current or future shareholder, officer, agent, employee or director of the Issuer.

See the section of these Listing Particulars entitled "**Risk Factors**".

**Computation of Interest on the Note:**

Subject to the Conditions, the Note shall accrue Interest in arrears on the final Business Day of March, June, September and December in each year, with the first Interest Accrual Date being 30 September 2017 and the final Interest Accrual Date being the Redemption Date (or, if such day is not a Business Day, the next following Business Day) or such other dates as the Issuer may elect from time to time (each an "**Interest Accrual Date**") in the amount (if any) equal to the Net Revenue for the Interest Period ending on that Interest Accrual Date. On each Interest Payment Date, to the extent that the Issuer has Available Cash, the Issuer will use such Available Cash to pay accrued but unpaid interest on the Note.

All payments in respect of the Note are subject in all cases to any applicable fiscal or other laws and regulations.

All calculations and determinations in relation to any payments in respect of the Note shall be made by the Issuer (or such agent as the Issuer may appoint in its sole and absolute discretion) and shall (save in the case of manifest error at the time the relevant calculation and / or determination is made) be final and binding on the Issuer and the Noteholder.

**Interest Payment Dates:** In respect of an Interest Period, such Business Day as the Issuer may elect following the Interest Period in respect of which the Issuer determines that it shall pay interest in respect of the Note for that Interest

Period, with the final Interest Payment Date being the Final Redemption Date;

**Redemption of the Note:** Unless previously redeemed by the Issuer in accordance with the Conditions, the Note shall be redeemed on the Redemption Date. The Issuer shall be entitled to redeem at any time the whole or any part of the Note for the time being outstanding on any date agreed by the Noteholder and Issuer. As and when the Note or any part of the Note is redeemed in accordance with the Conditions, the Issuer shall pay to the Noteholder the Principal Amount Outstanding of the Note (and, if redeemed in part, the relevant portion of the Principal Amount Outstanding of the Note).

**Taxation:** If the Issuer makes any payment under the Note in respect of which it is required to make any withholding or deduction of tax, it shall pay the full amount required to be withheld or deducted to the relevant taxation or other authority within the time allowed for payment to the applicable authority. An original receipt (or a certified copy thereof) issued by such authority or other evidence reasonably satisfactory to the Noteholder shall be evidence of the payment to such authority of all amounts so required to be withheld or deducted in respect of such payment and the Issuer shall deliver such receipt to such Noteholder within 30 days after it has made such payment or when such receipt is available (whichever is later).

See the section of these Listing Particulars entitled "***Taxation***".

**Listing:** Application has been made to the Irish Stock Exchange to approve these Listing Particulars and to admit the Note to listing on the Official List and to trading on the Global Exchange Market of the Irish Stock Exchange.

See the section of these Listing Particulars entitled "***General Information***".

**Use of Proceeds:** The Issuer shall apply all amounts raised by it under the Note for the purposes of making investments in accordance with the investment objective and strategy as described in the Investment Management Agreement; and (ii) paying certain costs, taxes, fees and expenses relating to the day-to-day operation and maintenance of the Issuer.

**Selling Restrictions:** The offering and sale of the Note and the distribution of these Listing Particulars are subject to all applicable selling restrictions including, without limitation, those of Ireland.

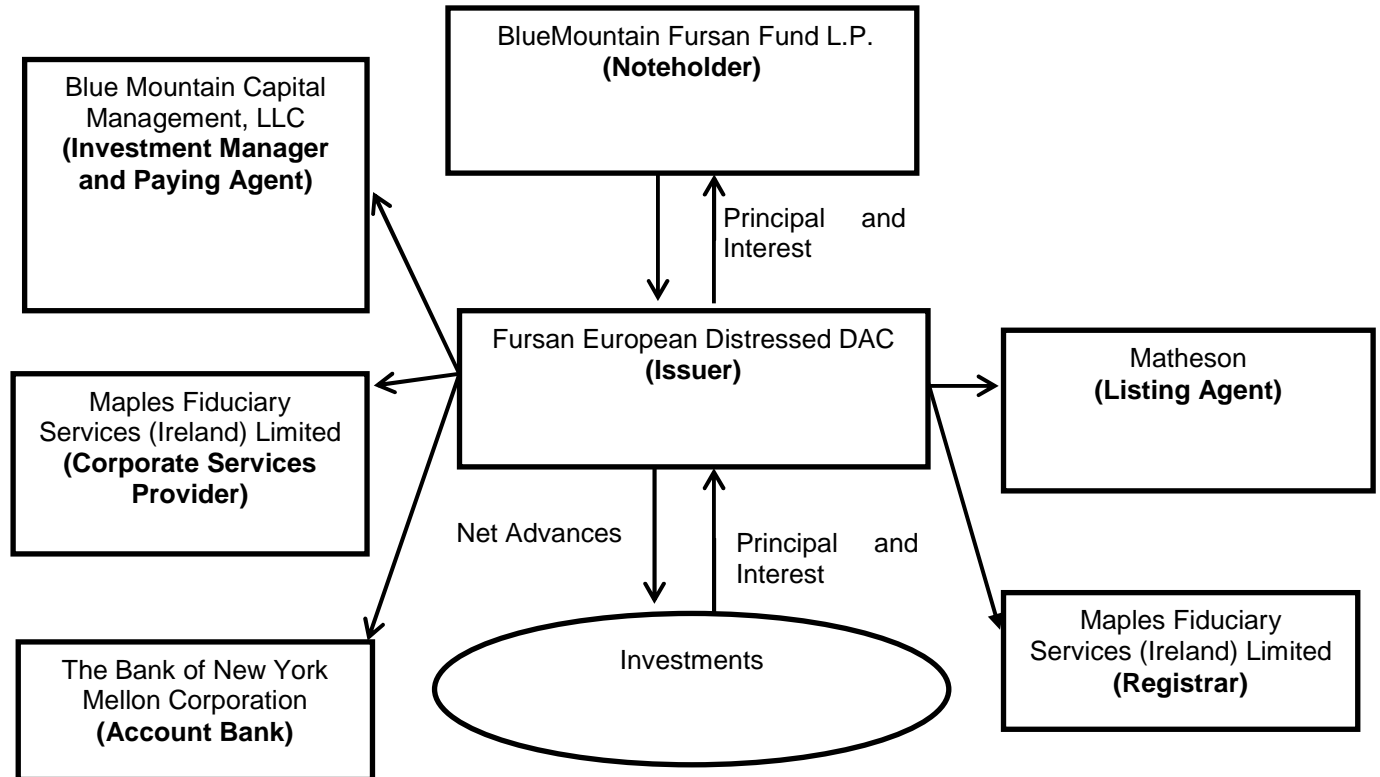
See the section of these Listing Particulars entitled "***Selling Restrictions***".

**Governing Law:** The Corporate Services Agreement, the Note and the Note Subscription Agreement are governed by Irish law. The Investment Management Agreement is governed by the laws of the State of New York.

**Risk Factors:** For a discussion of certain investment considerations relating to the Issuer and the Note that prospective investors should carefully consider prior to an investment in the Note, see the section of these Listing Particulars entitled "***Risk Factors***".

**ISIN Code:** IE00BDFBSH13.

**Rating:** The Note is not rated by any rating agency.



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## DESCRIPTION OF THE ISSUER

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### Introduction

Fursan European Distressed DAC is a designated activity company limited by shares duly incorporated under the laws of Ireland for an indefinite period under company registration number 604584. It was incorporated on 23 May 2017. The registered office of the Issuer is located at 32 Molesworth Street, Dublin 2, Ireland (Tel.: +353 (0) 1 697 3200; Fax.: +353 (0) 1 697 3300).

### Authorised and issued share capital

The authorised share capital of the Issuer is €100,000,000 divided into 50,000,000 Class “A” Ordinary Shares of €1.00 each and 50,000,000 Class “B” Ordinary Shares of €1.00 each. The Issuer has issued 80 (eighty) Class “A” Ordinary Shares of €1.00 (the “**Class A Issued Shares**”) and 20 (twenty) Class “B” Ordinary Shares of €1.00 (the “**Class B Issued Shares**”). The Class A Issued Shares are held directly or indirectly by MaplesFS Trustees Ireland Limited, an Irish company limited by shares (the “**Share Trustee**”) on trust for charitable purposes. The Class B Issued Shares are held directly by the Noteholder. In accordance with the Declaration of Trust, the Share Trustee has, *inter alia*, undertaken not to exercise its voting rights to wind up the Issuer unless and until it has received written confirmation from the Board of Directors that the Issuer does not intend to carry on further business.

### Principal activities

The Issuer has been established as a special purpose vehicle. The principal activities of the Issuer are the issuance of financial instruments, the acquisition of financial assets and the entering into of other legally binding arrangements.

### Directors

The directors of the Issuer and their respective professional addresses and other principal activities are:

Name	Principal Activity	Professional Address
Jonathan Reynolds	Director	32 Molesworth Street, Dublin 2, Ireland
Sean O’Sullivan	Director	32 Molesworth Street, Dublin 2, Ireland

The directors have, collectively, appropriate expertise and experience for the management of the Issuer’s business.

### Corporate Services Provider

Maples Fiduciary Services (Ireland) Limited whose registered office is at 32 Molesworth Street Dublin 2, Ireland has been appointed as Corporate Services Provider for the Issuer pursuant to the Corporate Services Agreement. Its duties include the provision of certain administrative, accounting and related services. The Corporate Services Provider will also act as Registrar of the Note and company secretary of the Issuer.

### Indebtedness – Principal Amount Outstanding under the Note

The Principal Amount Outstanding of the Note on the Issue Date was EUR 10,000,000.



**Financial Statements**

The Issuer has not prepared financial statements as of the date of these Listing Particulars. The Issuer intends to publish its first financial statements in respect of the period ending on 31 December 2017. The Issuer will not prepare interim financial statements.

**Auditors**

The auditors of the Issuer are PwC of One Spencer Dock, North Wall Quay, Dublin 1, Ireland who are chartered accountants and are members of the Institute of Chartered Accountants in Ireland and are qualified to practise as auditors in Ireland.

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## DESCRIPTION OF INVESTMENT MANAGER

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BlueMountain Capital Management, LLC is the investment manager of the Issuer and manages its investment program. The Investment Manager is a registered investment adviser under the U.S. Investment Advisers Act of 1940, as amended (the “**Advisers Act**”). The Investment Manager is registered as a Commodity Pool Operator (“**CPO**”) and a Commodity Trading Advisor (“**CTA**”) with the Commodity Futures Trading Commission (the “**CFTC**”) and is a member of the National Futures Association (“**NFA**”). Pursuant to the Investment Management Agreement with the Issuer, the Investment Manager has full discretion to invest the assets of the Issuer in a manner consistent with the investment objective and investment strategies described in the Investment Management Agreement.

Blue Mountain Capital Partners (London) LLP, a wholly owned subsidiary of the Investment Manager (“**BlueMountain London**”), serves as adviser to the Investment Manager, primarily with respect to issuers based in Europe, and is compensated by the Investment Manager for its services. BlueMountain London is registered with the Financial Conduct Authority, and is also registered as a CTA with the CFTC and is a member of the NFA.

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## DESCRIPTION OF THE MATERIAL TRANSACTION DOCUMENTS

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Since its date of incorporation, the Issuer has entered into certain contractual arrangements. The following is a summary of current material contractual arrangements which the Issuer has in place.

### **The Investment Management Agreement**

Pursuant to the terms of the Investment Management Agreement, the Issuer appointed the Investment Manager to provide investment management services to the Issuer and will be responsible for making investment decisions in respect of the Issuer and managing its assets.

The services provided by the Investment Manager include, *inter alia*:

- (i) to identify and evaluate investment opportunities for the Issuer;
- (ii) to originate, acquire, hold, monitor, manage, own, sell, transfer, convey, assign, exchange, pledge, sell, trade, or otherwise dispose of or otherwise deal in any assets in the Accounts; provided that all investments made for and on behalf of the Issuer are “qualifying assets” (within the meaning of Section 110);
- (iii) to select the banks, advisors, consultants, and other service providers and counterparties to be used by the Issuer from time to time and to enter into, execute, deliver and monitor the Issuer’s investments and such documents as may be required to open and operate trading and other accounts for the Issuer;
- (iv) to negotiate, execute, deliver, and enter into such agreements, instruments, and authorisations on behalf of the Issuer, on such terms and conditions as the Investment Manager, acting in its sole and absolute discretion, deems necessary or appropriate, and to cause the Issuer to pay such management fees, commissions, monitoring fees, and other fees and expenses pursuant to the terms of such agreements as the Investment Manager, acting in its sole and absolute discretion, deems necessary or appropriate;
- (v) to provide research and analysis and direct the formulation of investment policies and strategies and identify investment opportunities;
- (vi) to incur leverage in the course of its investment activities;
- (vii) to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the assets of the Issuer;
- (viii) to open, maintain, and close bank accounts and draw checks or other orders for the payment of moneys;
- (ix) to seek representation in the management of the issuers of investments, which representation may involve, without limitation, securing representation on boards of directors of such issuers, creditors’ committees, management committees of partnerships or other entities, or other similar boards, committees or other governing bodies in respect of such issuers;
- (x) subject to the prior approval of the Board of Directors of the Issuer, to sue and be sued, to prosecute, settle or compromise all claims, to compromise, settle or accept judgment with respect to claims against the Issuer and to execute all documents and make all representations, admissions and waivers in connection therewith;
- (xi) to engage in hedging strategies in connection with the acquisition, ownership or disposition of any assets of the Issuer, including interest rate and currency hedging by use of swaps, swaptions, caps and floors, forward contracts, option contracts, and in general any other type of similar financial instrument;

- (xii) to cause the Issuer to engage in cross trades or similar transactions with one or more affiliates, to the extent permitted by applicable laws and subject in all respects to compliance with the Advisers Act (including the requirements that any such cross trade be in the best interest of the Issuer and be effected at a fair price with no compensation to the Investment Manager for effecting such trade or any commissions paid to any affiliate of the Investment Manager);
- (xiii) to authorise any member, employee, or other agent of the Investment Manager or agent or employee of the Issuer to act for and on behalf of the Issuer in all matters incidental to the foregoing;
- (xiv) to agree and consent, or omit from agreeing and consenting on the Issuer's behalf to any proposed amendment, modification, waiver, consent, indulgence or such other matter to or in relation to the terms and conditions of any investment (including, for the avoidance of doubt, the right of the Investment Manager to vote or refrain from voting on any such matters for and on behalf of the Issuer);
- (xv) to enter into, make and perform any contracts, agreements, or other undertakings it may deem advisable in connection with providing investment management services to the Issuer, including, but not limited to, contracts, agreements, or other undertakings with persons, firms, or corporations with which the Investment Manager or any principal of the Investment Manager is affiliated;
- (xvi) to assist the Issuer in performing its obligations in relation to timely confirmations, reconciliation of portfolio data, dispute resolution and reporting under the Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories dated 4 July 2012 ("**EMIR**"), and such other obligations as may arise from time to time in accordance with EMIR;
- (xvii) to act as paying agent in respect of making any payments of principal and/or interest on the Notes issued by the Issuer; and
- (xviii) to otherwise act for the Issuer as it may deem necessary or advisable in connection with any investment management-related services provided pursuant to the Investment Management Agreement.

Pursuant to its terms the Investment Management Agreement shall continue in effect for one year from the 21 June 2017 and shall be renewed automatically for successive one-year periods. Notwithstanding the foregoing, the Investment Management Agreement may be terminated without cause by either the Issuer or the Investment Manager (in their sole and absolute discretion) upon at least 60 days' prior written notice to the other party.

### **The assets**

The Issuer may invest in a range of assets, as described below, provided however that all assets it acquires must at all times constitute "*qualifying assets*" within the meaning of section 110 of the Taxes Consolidation Act 1997 (as amended) (the "**TCA**").

The Note will at all times be collateralised by the assets and the maturity and / or liquidity of the assets will be appropriate taking account of the Redemption Date of the Note.

The types of assets that may be acquired by the Issuer include a broad range of debt and equity instruments, such as the following:

- (a) intermediate-term credit-related assets across consumer, commercial, corporate, and industrial sectors and other assets and receivables of any kind, including a broad range of debt and equity instruments and sectors and strategies, including unsecured debt, senior secured debt, second lien loans, whole loans (including whole loan mortgages), bridge loans, convertible securities, debtor-in-possession financing, bank loans, private mortgage loans, non-performing loans, real estate debt, pay-in-kind bonds, asset-backed lending/securities,

- including asset-backed securities, commercial mortgage-backed securities, residential mortgage-backed securities and leases, structured notes, global bonds, post-reorganisation/restructured equities, equity warrants, distressed debt (including corporate loans, real estate loans and structured finance), trade claims, litigation certificates, equity investments associated with corporate restructurings, equity (both long and short positions), equity-like and debt-like instruments, credit default swaps and other over-the-counter or other derivative instruments (“**Derivative Instruments**”); and / or
- (b) debt and equity (both long and short positions) of issuers involved in the origination of residential or commercial real estate mortgages; and / or
  - (c) physical assets, including real estate, aviation assets, maritime assets and commodities, provided that any such holdings will in aggregate be less than 10% of the total assets of the Issuer, and debt or equity interests in an entity that holds physical assets, including real estate, aviation assets, maritime assets and commodities; and / or
  - (d) short-term, high-grade assets or other cash management products, including registered or unregistered investment funds sponsored, managed or serviced by advisory subsidiaries of the Investment Manager; and / or
  - (e) in addition to Derivative Instruments, any holdings through a variety of investment techniques and financial instruments, including short sales, derivatives, options, or swaps, both for investment purposes and for risk management purposes; and / or
  - (f) cash in any currency.

#### **Legal jurisdiction by which the assets are governed**

There are no restrictions on the governing law that may apply to the assets.

The assets have been and will be originated in one or more transactions that in all material respects were and will be in accordance with and in compliance with all applicable local laws, rules and regulations applicable to the relevant assets and original transactions.

No more than 10% of the assets comprise equity securities that are not traded on a regulated or equivalent market and listed equities in the portfolio will be equities listed on a regulated or equivalent market.

Where the assets comprise equity securities that are admitted to trading on a regulated or equivalent market the following information will be provided: (i) a description of the securities; (ii) a description of the market on which they are traded including its date of establishment, how price information is published, an indication of daily trading volumes, information as to the standing of the market in the country and the name of the market’s regulatory authority; and (iii) the frequency with which prices of the relevant securities, are published.

#### **The Corporate Services Agreement**

Pursuant to the terms of the Corporate Services Agreement, the Issuer appointed the Corporate Services Provider to provide certain corporate administration services to the Issuer. In addition, the Corporate Services Provider will act as Registrar in respect of the Note.

The services provided by the Corporate Services Provider include, *inter alia*, (i) general company secretarial, registrar and company administration services, (ii) the maintaining of such books and records as are required by any applicable law or otherwise for the proper conduct and affairs of the Issuer, (iii) the preparation of the Issuer’s annual accounts and arranging with the Issuer’s auditors for the annual audit of those accounts, (iv) assisting the Issuer in arranging the submission of the annual accounts to the Companies Registration Office, (v) assisting the Issuer in arranging for the establishment of such bank accounts in the name of the Issuer as are required and arranging for the monitoring and reconciliation of those accounts, (vi) the appointment of two or more directors to the

Board of Directors of the Issuer, and (vii) arranging of meetings of the board and/or of the shareholders of the Issuer in Ireland as requested by the Issuer.

### **The Note Subscription Agreement**

Pursuant to a Note Subscription Agreement, the Noteholder will subscribe for, and the Issuer will issue, the Note. The Issuer will, broadly, use the net proceeds of the issuance of the Note, together with any further advances made by the Noteholder to the Issuer under the Note, to invest in a wide range of equity and credit market instruments and other asset classes. The Issuer will pay the Noteholder an interest amount in respect of the Note equal to the net income earned by the Issuer in respect of the assets it has acquired, after all of its expenses have been taken into account.

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## CONDITIONS OF THE NOTE

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### Terms and Conditions

#### 1 DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

**"Advance"** means the amounts advanced by the Noteholder to the Issuer pursuant to Condition 5.2 (*Delivery of Advance Notices*) as additional principal amounts under the Note;

**"Advance Notice"** means a notice in the form attached in Appendix 1 to these Conditions;

**"Available Cash"** means cash amounts that the Investment Manager (on behalf of the Issuer) in its sole and absolute discretion determines are not required by the Issuer at that time for investment or any other purpose and that are available to repay principal or to pay accrued interest in respect of the Note;

**"Business Day"** means a day (other than Saturday or Sunday) on which commercial banks and foreign exchange markets settle payments in Dublin, New York and London;

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

**"Companies Act"** means the Companies Act 2014 (as amended);

**"Corporate Administration Agreement"** means the corporate administration agreement dated 21 June 2017 between the Issuer and the Corporate Administrator;

**"Corporate Administrator"** means Maples Fiduciary Services (Ireland) Limited (including any successors or assigns);

**"CRS"** means the Organisation for Economic Co-operation and Development ("**OECD**") Common Reporting Standard, together with any treaty, law, regulation or agreement with any governmental or taxation authority in any jurisdiction which implements or facilitates the implementation of the OECD Common Reporting Standard;

**"Expenses"** means all expenses of the Issuer (that are recognised for accounting purposes under the generally accepted accounting practices adopted by the Issuer for the purposes of Irish corporation tax), other than the interest due under the Note in accordance with Condition 6 (*Interest*);

**"EUR"** means the lawful currency of the participating member states of the European Union adopted in accordance with the Treaty establishing the European Communities (as amended by the Treaty on European Union);

**"FATCA"** means:

- (a) legislation known as the U.S. Foreign Account Tax Compliance Act (FATCA), Sections 1471 through 1474 of the Code and the U.S. Treasury regulations promulgated thereunder (whether proposed, temporary or final);
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the United States and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above;

- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the U.S. Internal Revenue Service, the U.S. government or any governmental or taxation authority in any other jurisdiction;
- (d) any similar automatic exchange of financial, account or tax information agreements or arrangements;
- (e) in the case of each of (a) through (d) above, including any successor provisions, subsequent amendments, and administrative guidance promulgated thereunder (or which may be promulgated in the future), any applicable intergovernmental agreement, and related statutes, regulations or rules, and other guidance thereunder, any governmental authority pursuant to the foregoing authorities, and any agreement entered into by or with respect to the Issuer or any of its affiliates;

**"FATCA Deduction"** means any deduction or withholding from a payment made in respect of the Note required by FATCA;

**"Final Redemption Date"** means 31 December 2045;

**"Gross Revenue"** means all revenues of the Issuer (that are recognised for accounting purposes under the generally accepted accounting practices adopted by the Issuer for the purposes of Irish corporation tax);

**"Insolvency Event"** means, with respect to any person, any of the following:

- (a) it is unable or admits inability to pay its debts as they fall due or, by reason of actual or anticipated financial difficulties, commences negotiations with any class of its creditors with a view to rescheduling any of its indebtedness; or
- (b) a moratorium has been declared or takes effect in respect of its indebtedness;

**"Insolvency Proceedings"** means, in respect of any person, any liquidation, winding-up, dissolution, receivership, examinership, bankruptcy or administration (whether by court action or otherwise) of that person and shall be construed so as to include any equivalent or analogous proceedings under the law of any jurisdiction including the seeking of liquidation, winding-up, dissolution, receivership, examinership, bankruptcy, administration (whether by court action or otherwise) or any other arrangement for the protection or relief of debtors in each case affecting the rights of all creditors generally and not just one particular creditor or group of creditors (excluding any solvent reorganisation, rearrangement or similar arrangement and excluding any winding up petition or other involuntary winding up measures or proceedings of a type described above which is frivolous or vexatious and is discharged, stayed or dismissed within 60 days of commencement);

**"Interest Accrual Date"** means 31 March, 30 June, 30 September and 31 December in each year (or the succeeding Business Day, if such day is not a Business Day), or such other dates as the Issuer may elect from time to time, with the final Interest Accrual Date being the Redemption Date;

**"Interest Payment Date"** means, in respect of an Interest Period, such Business Day as the Issuer may elect following the Interest Period in respect of which the Issuer determines that it shall pay interest in respect of the Note for that Interest Period, with the final Interest Payment Date being the Final Redemption Date;



**"Interest Period"** means the period from (and including) one Interest Accrual Date to (but excluding) the immediately following Interest Accrual Date, with the first Interest Period commencing on (and including) the Issue Date and ending on (but excluding) the first Interest Accrual Date;

**"Investment Management Agreement"** means the investment management agreement dated as of 21 June 2017 between the Issuer and the Investment Manager;

**"Investment Manager"** means BlueMountain Capital Management, LLC (including any successors or assigns);

**"Issue Date"** means 20 July 2017;

**"Maximum Principal Amount"** means EUR 500,000,000;

**"Net Revenue"** means, in respect of each Interest Period, the Gross Revenue attributable to that Interest Period less the Expenses attributable to that Interest Period, provided that the Net Revenue shall not be less than zero;

**"Note Termination Event"** has the meaning given to it in Condition 15 (*Note Termination Events*);

**"Noteholder"** means the person in whose name the Note is for the time being registered in the Register;

**"Note Subscription Agreement"** means the note subscription agreement dated 20 July 2017 between the Issuer and the Subscriber;

**"Portfolio"** means all of the assets acquired, originated and / or held by the Issuer using the proceeds of the Subscription Amount and any Advances made pursuant to the Note;

**"Principal Amount Outstanding"** means, at any time, (i) the Subscription Amount plus the aggregate of further Advances made by the Noteholder from time to time; less (ii) the aggregate of all Principal Repayments made by the Issuer to the Noteholder in accordance with Condition 7 (*Redemption of the Note*);

**"Principal Repayment"** means an amount paid by the Issuer to the Noteholder as a repayment of principal under the Note and "*Principal Repayments*" shall be construed accordingly;

**"Redemption Date"** means the Final Redemption Date or, if earlier, the date on which the Note is redeemed in full in accordance with Condition 7 (*Redemption of the Note*);

**"Register"** means the register of the holder of the Note to be maintained by the Registrar on behalf of the Issuer in accordance with Condition 13 (*Title to the Note*) in the form set out in Annex 1 of Schedule 1 to the Note Subscription Agreement;

**"Registrar"** means the Corporate Administrator (including any successors or assigns);

**"Senior Obligations"** means any and all amounts that are due and payable by the Issuer, from time to time, other than payments of principal and interest to the Noteholder in respect of the Note or to the holders of any other subordinated notes or debt securities that may be issued by the Issuer, including, without limitation:

- (a) any secured debt (if any) of the Issuer;
- (b) any and all amounts payable by the Issuer under the Transaction Documents other than payments of principal and interest to the Noteholder in respect of the Note;

- (c) any and all amounts payable by the Issuer pursuant to any loan agreement (other than in respect of any subordinated loan agreement or subordinated notes), whether existing at the Issue Date, or thereafter entered into by the Issuer; and
- (d) any and all Expenses;

**"Specified Agreement"** means any agreement, arrangement or understanding that:

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

**"Specified Person"** means a person, or persons who are connected with each other (within the meaning of Section 10 TCA), that is (or are) beneficially entitled to amounts of interest payable by the Issuer on the Note:

- (a) from whom assets were acquired by the Issuer;
- (b) to whom the Issuer has made loans or advances; or
- (c) with whom the Issuer has entered into Specified Agreements,

where the aggregate value of such assets, loans, advances or agreements represents not less than 75% of the aggregate value of the assets of the Issuer;

**"Subscription Amount"** means EUR 10,000,000 (being the initial amount paid by the Noteholder to the Issuer on or about the Issue Date);

**"Tax Confirmation"** means a confirmation from the Noteholder in the form included in Appendix 2 to these Conditions which confirms such Noteholder's status for the purposes of FATCA and CRS;

**"Tax Declaration"** means a declaration in the form set out in Appendix 4 to these Conditions in respect of the Note;

**"TCA"** means the Taxes Consolidation Act 1997 (as amended); and

**"Transaction Documents"** means the Corporate Administration Agreement, the Investment Management Agreement, the Note Subscription Agreement and the Note (and such other documents as may be designated by the Issuer from time to time).

## 1.2 Interpretation

In the Note, unless the context otherwise requires:

- (a) any reference to the singular includes reference to the plural and *vice versa* and references to the masculine gender includes reference to the feminine and neuter gender and *vice versa*;
- (b) any references to any clause, sub-clause, paragraph or sub-paragraph is to be construed as referring to a clause, sub-clause, paragraph or sub-paragraph (as the case may be) of the Note;
- (c) the headings in the Note are inserted for convenience of reference only and shall not in any way form part of or affect or be taken into account in the construction or interpretation of any provision of the Note or any schedules or appendices hereto;
- (d) words such as "*hereunder*", "*hereto*", "*hereof*" and "*herein*" and other words commencing with "*here*" shall, unless otherwise expressly stated to the contrary in the Note, refer to the particular clause, sub-clause, paragraph or sub-paragraph or schedule of the Note, or, as the context may require, to the whole of the Note;
- (e) references to any agreement or instrument shall be construed as references to such agreement or instrument as it may from time to time be varied, amended, supplemented or substituted; and
- (f) any references to any provision of any legislation shall include any modification, re-enactment or extension thereof, and any reference to any provision of any legislation unless the context clearly indicates to the contrary shall be reference to the legislation of Ireland.

## **2 FORM AND DENOMINATION**

### **2.1 Form**

The Note is issued in definitive registered form.

### **2.2 Denomination**

The Note shall have a maximum principal denomination equal to the Maximum Principal Amount and a minimum principal denomination of EUR 100,000. The initial principal denomination of the Note shall be equal to the Subscription Amount and integrals of EUR 1 thereafter.

## **3 STATUS**

The Note shall be issued as limited recourse unsecured definitive registered note and shall be fully subordinated to and rank behind the Senior Obligations. The Note shall rank *pari passu* equally and rateably without discrimination or preference with any other unsecured notes or other unsecured debt obligations (howsoever described) issued or entered into by the Issuer.

## **4 PRINCIPAL AMOUNT**

### **4.1 Initial Principal Amount Outstanding**

The initial Principal Amount Outstanding shall be equal to the Subscription Amount paid by the Subscriber for the Note.

#### **4.2 Increase in Principal Amount Outstanding**

The Principal Amount Outstanding may be increased in minimum multiples of EUR 1 in accordance with Condition 5 (*Advances*), provided that the Principal Amount Outstanding may not exceed the Maximum Principal Amount.

#### **4.3 Maximum Principal Amount Outstanding**

The Note may not have a maximum Principal Amount Outstanding in excess of the Maximum Principal Amount. An Advance shall not be made by the Noteholder to the extent that such Advance would result in the Note having a Principal Amount Outstanding in excess of the Maximum Principal Amount.

#### **4.4 Reduction in Principal Amount Outstanding**

The Principal Amount Outstanding may be reduced from time to time in accordance with Condition 7 (*Redemption of the Note*).

### **5 ADVANCES**

#### **5.1 Request for Advances**

The Issuer or the Investment Manager (on its behalf) may request and the Noteholder shall agree to make further advances of principal under the Note to the Issuer in accordance with this Condition 5 (*Advances*).

#### **5.2 Delivery of Advance Notices**

Whenever the Issuer desires to receive advances of additional principal amounts under the Note, it or the Investment Manager (on its behalf) shall deliver to the Noteholder an Advance Notice not later than 10.00 am (Dublin time) five (5) Business Days (or such lesser period as the Issuer and the Noteholder may mutually agree) before the date of the proposed Advance specifying the date and amount of the additional principal amount that the Issuer or the Investment Manager (on its behalf) requests to be advanced by the Noteholder.

#### **5.3 Payment of Advances**

5.3.1 Subject to Condition 5.3.2 below, the Noteholder may, in its sole and absolute discretion, advance additional principal amounts under the Note in immediately available funds to such account, and on such date, as may be designated by the Issuer or the Investment Manager (on its behalf) in the Advance Notice.

5.3.2 The Noteholder shall be obliged to advance any additional principal amounts to the Issuer in the manner described above if the Issuer indicates in the Advance Notice that the additional principal amounts requested are required for the purposes of paying Expenses of the Issuer.

#### 5.4 **Limit on Advances**

The Issuer or the Investment Manager (on its behalf) may not issue an Advance Notice to the Noteholder pursuant to Condition 5.2 (*Delivery of Advance Notices*) if, in consultation with the Corporate Administrator and the Investment Manager, the additional principal amount requested in that Advance Notice would, if advanced by the Noteholder, result in the Principal Amount Outstanding in respect of the Note exceeding the Maximum Principal Amount.

### 6 **INTEREST**

#### 6.1 **Interest accrual**

Subject to Condition 6.5 (*Losses*), the Note shall accrue interest in arrears on each Interest Accrual Date in the amount (if any) equal to 98.5% (ninety-eight point five per cent.) of the Net Revenue for the Interest Period ending on that Interest Accrual Date.

#### 6.2 **Interest payment**

On each Interest Payment Date, to the extent that the Issuer has Available Cash, the Issuer will use such Available Cash to pay accrued but unpaid interest on the Note.

#### 6.3 **Available Cash**

If the Issuer does not have sufficient Available Cash to pay all accrued but unpaid interest on an Interest Payment Date (a “**Relevant Interest Payment Date**”), the shortfall amount of such accrued but unpaid interest shall remain outstanding and shall be paid by the Issuer in respect of the Note on the first succeeding Interest Payment Date on which the Issuer has sufficient Available Cash to make such payments in priority to any interest which has accrued since the Relevant Interest Payment Date. No interest shall accrue on such accrued but unpaid interest amounts.

#### 6.4 **Interest due on Redemption Date**

All accrued and unpaid interest amounts shall (if not paid at an earlier Interest Payment Date) be due and payable by the Issuer on the Redemption Date.

#### 6.5 **Losses**

To the extent that, for an Interest Period, the Expenses recognised for accounting purposes in that Interest Period are in excess of the Gross Revenue recognised for accounting purposes in that Interest Period (the difference being a “**Loss**”), such Loss shall be set-off against any accrued but unpaid interest so that the amount of accrued but unpaid interest is reduced by the amount of such Loss. Any excess of such Loss (not set-off against accrued but unpaid interest) shall be carried forward to reduce the interest accruing in subsequent Interest Periods.

### 7 **REDEMPTION OF THE NOTE**

#### 7.1 **Final redemption**

Unless previously redeemed by the Issuer in accordance with the Conditions, the Note shall be redeemed on the Final Redemption Date.

#### 7.2 **Early redemption**

The Note may be redeemed in whole or in part on any date agreed by the Noteholder and the Issuer. On such date (or as soon as practicable thereafter to the extent that the Issuer does

not have sufficient Available Cash at such time), the Note, or the part of the Note specified in the notice, shall be redeemed by the Issuer.

### **7.3 Payment on redemption**

As and when the Note or any part of the Note is redeemed in accordance with the Conditions and to the extent that the Issuer has Available Cash at such time, the Issuer shall pay to the Noteholder the Principal Amount Outstanding of the Note (and, if redeemed in part, the relevant portion of the Principal Amount Outstanding of the Note).

### **7.4 Redemption *in specie***

If on any date agreed by the Noteholder and the Issuer pursuant to Condition 7.2 (*Early redemption*) the Issuer does not have sufficient Available Cash to redeem the Note or that part of the Note so agreed, the Issuer may, subject to the prior written agreement of the Noteholder, transfer to the Noteholder (or to the direction of the Noteholder) assets comprised in the Portfolio with a value (as determined by the Investment Manager) equal to the Principal Amount Outstanding of the Note (and if redeemed in part, the relevant portion of the Principal Amount Outstanding of the Note).

### **7.5 Costs of *in specie* redemption**

Any costs and expenses incurred by the Issuer (or expected to be incurred by the Issuer) giving effect to a redemption *in specie* pursuant to Condition 7.4 (*Redemption in specie*) shall be payable to the Issuer by the Noteholder prior to or following the redemption as directed by the Issuer.

### **7.6 Notice to Registrar**

The Investment Manager, on behalf of the Issuer, shall notify the Registrar of any redemption of the whole or any part of the Note in accordance with this Condition 7 (*Redemption of the Note*).

## **8 CANCELLATION**

If the Note is redeemed in full pursuant to these Conditions, the Note will be cancelled forthwith and may not be resold or reissued.

## **9 PAYMENTS AND CALCULATIONS**

### **9.1 Payments**

When the Issuer is required to pay an amount in respect of the Note pursuant to these Conditions, the Investment Manager, on behalf of the Issuer, shall make such payment in EUR and in immediately available cleared funds to such bank account of the Noteholder as specified to the Issuer by the Noteholder. All payments in respect of the Note are subject in all cases to any applicable fiscal or other laws and regulations.

### **9.2 Calculations**

On each date on which any matter or any amount payable or to be accrued in respect of the Note is to be calculated in accordance with the Conditions, the Investment Manager shall at or as soon as practicable after the specified time on such date establish such matter or amount as is specified in the Conditions thereof in the manner set out in such Conditions (including, where applicable, following prior consultation with the Corporate Administrator), and shall as soon as reasonably practicable thereafter notify the same to the Noteholder, the Issuer, the Investment Manager and any other person as may be specified by the Conditions. The

Investment Manager shall, in its sole and absolute discretion, but following consultation with the Corporate Administrator, calculate the Net Revenue for each Interest Period.

**9.3 Business Day**

If the date on which any payment is to be made under the Conditions is not a Business Day, the Noteholder shall not be entitled to payment of such amount until the next following Business Day and shall not be entitled to any further interest or other payment in respect of any such delay.

**10 PRESCRIPTION**

Claims against the Issuer for payment in respect of the Note shall be prescribed and become void unless made within five years from the due date for payment.

**11 TAXES**

**11.1 Payment without withholding**

All sums payable to the Noteholder in respect of the Note shall be paid free and clear of, and without withholding or deduction for, or on account of, any tax, unless the Issuer is required by law to make such a payment subject to the withholding or deduction of tax.

**11.2 Notice of obligation to withhold**

If, at any time, the Issuer is required by law or revenue practice to make any withholding or deduction from any sum payable by it in respect of the Note (or if thereafter there is any change in the rate at which or the manner in which such withholding or deduction is calculated), the Issuer shall promptly notify the Noteholder.

**11.3 Payment of withholding**

If the Issuer makes any payment hereunder in respect of which it is required to make any withholding or deduction of tax, it shall pay the full amount required to be withheld or deducted to the relevant taxation or other authority within the time allowed for payment to the applicable authority. An original receipt (or a certified copy thereof) issued by such authority or other evidence reasonably satisfactory to the Noteholder shall be evidence of the payment to such authority of all amounts so required to be withheld or deducted in respect of such payment and the Issuer shall deliver such receipt to such Noteholder within 30 days after it has made such payment or when such receipt is available (whichever is later).

**11.4 No gross-up**

If the Issuer makes any payment under the Note in respect of which it is required to make any withholding or deduction of tax, the Issuer shall not be required to increase any payment in respect of which it makes such a withholding or deduction or otherwise compensate a Noteholder for that deduction or withholding.

**11.5 FATCA**

The Issuer may make any FATCA Deduction it is required to make pursuant to FATCA, and any payment required in connection with that FATCA Deduction, and the Issuer shall not be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the Noteholder for that FATCA Deduction.

**11.6 Provision of Information**

**11.6.1** The Noteholder shall within five (5) Business Days of a written request by the Issuer:

- (a) supply to the Issuer (or such agent of the Issuer as it may elect) such forms, documentation and other information (including a Tax Confirmation) relating to its status (whether under the CRS, FATCA or otherwise) as the Issuer may reasonably request for the purposes of the Issuer's compliance with FATCA or any other law, regulation, or exchange of information regime; and
- (b) provide to the Issuer (or such other agent acting on behalf of the Issuer) such additional information as the Issuer may from time to time request in order for the Issuer (or such other agent acting on behalf of the Issuer) to comply with its anti-money laundering, legal, tax and regulatory obligations (including, without limitation, such information required to ensure (to the extent possible) that payments on the Note may be made free of deduction of any tax and on a tax-deductible basis).

11.6.2 The Noteholder may inspect any reports prepared from time to time by the Investment Manager regarding the performance of the Portfolio (in either physical or electronic format) during usual business hours on any weekday (excluding Saturdays, Sundays and public holidays) at the registered office of the Issuer.

## **12 LISTING**

The Issuer shall apply for the Note to be listed on a recognised stock exchange. There is no guarantee that such an application will be obtained. The Issuer will use its reasonable endeavours to obtain and maintain the listing of the Note, provided that if the Issuer is unable to do so, having used such reasonable endeavours, or if the maintenance of such trading is unduly onerous, the Issuer may instead use its reasonable endeavours to apply for the Note to be listed on such other stock exchange, as it may decide in its sole and absolute discretion.

## **13 TITLE TO THE NOTE**

### **13.1 Register**

So long as the Note is outstanding, the Registrar will maintain a register of the holder of the Note at its registered office, which shall be located outside of the United Kingdom.

### **13.2 Entries on Register**

The Register shall show:

- (a) the principal amount and the certificate number of the certificate representing the Note;
- (b) the date of issue of the Note;
- (c) all subsequent transfers and changes of ownership of the Note;
- (d) the name and address of the holder of the Note;
- (e) the Subscription Amount in respect of the Note;
- (f) all increases of the Principal Amount Outstanding;
- (g) all reductions of the Principal Amount Outstanding of the Note;



- (h) the redemption in full, or in part, and cancellation of the Note whether by reason of replacement or otherwise; and
- (i) all replacement certificates constituting the Note.

### **13.3 Increase in Principal Amount Outstanding**

On receipt of a completed Advance Notice and a related Advance to the Issuer, the Registrar shall update the Register so that the Principal Amount Outstanding reflected on the Register is increased by the amount of any Advances received by the Issuer pursuant to Condition 5 (*Advances*).

### **13.4 Reduction in Principal Amount Outstanding**

On receipt of a notice from the Investment Manager, on behalf of the Issuer, pursuant to Condition 7.6 (*Notice to Registrar*), the Registrar shall update the Register so that the Principal Amount Outstanding reflected on the Register is reduced to reflect the redemption in whole or in part of the Note by the Issuer pursuant to Condition 7 (*Redemption of the Note*).

### **13.5 Title to the Note**

The Note Certificate constituting the Note is evidence of entitlement only. Title to the Note shall pass by and upon registration of transfers in the Register. Registration of ownership of the Note shall be conclusive evidence (in the absence of manifest error) of absolute ownership of the Note.

### **13.6 Replacement of the Note**

If the Note Certificate constituting the Note is lost, stolen, mutilated, defaced or destroyed, it may be replaced at the registered office of the Issuer, subject to all applicable laws, upon payment by the claimant of the expenses incurred in connection with such replacement and on such terms as to evidence, security, indemnity and otherwise as the Issuer may reasonably require. A mutilated or defaced Note Certificate constituting the Note must be surrendered before a replacement will be issued.

## **14 TRANSFER OF THE NOTE**

### **14.1 No Transfer to a Specified Person**

The Note may not be transferred to any person that is a Specified Person.

### **14.2 Transfers**

Subject to Condition 14.1 (*No Transfer to a Specified Person*) and Condition 14.7 (*Further restrictions on transfer*), the Note may be transferred in whole (but not in part), upon surrender of the certificate constituting the Note at the registered office of the Registrar, with the form of transfer set out in Appendix 3 endorsed on the Note duly completed and signed by or on behalf of the transferor and the transferee and together with such evidence as the Registrar may reasonably require to prove:

- (a) the title of the transferor;
- (b) the authority of the individuals who have executed the form of transfer;
- (c) the payment of any stamp duty payable on such transfer;
- (d) that the transferee is not a Specified Person;

- (e) that the transferee will be the beneficial owner of the Note, will be beneficially entitled to interest payable on the Note and is not resident in Ireland for tax purposes;
- (f) that the transferee has completed and provided a Tax Confirmation, or any other confirmation that may be required by the Issuer for tax reporting purposes, to the Issuer; and
- (g) that the transferee has completed and provided a Tax Declaration to the Issuer.

#### 14.3 **Tax Confirmation**

Each transferee of the Note shall provide a duly completed Tax Confirmation together with any information required in connection with that Tax Confirmation, and any other confirmation that may be required by the Issuer for tax reporting purposes, to the Issuer.

#### 14.4 **Tax Declaration**

Each transferee of the Note shall provide a duly completed Tax Declaration to the Issuer.

#### 14.5 **Registration and delivery of the Note**

Within five (5) Business Days of the surrender of the certificate constituting the Note in accordance with Condition 14.2 (*Transfers*) above (or such longer period as may be required to comply with any applicable fiscal or other laws or regulations (as may be determined by the Issuer in its sole and absolute discretion)), the Registrar will register the transfer in question and deliver a new certificate at the Registrar's registered office (at the request, cost and risk of the transferee) or send it by uninsured registered mail to such address as the transferee may specify for the purpose.

#### 14.6 **No charge**

No Noteholder will be required to bear the costs and expenses of effecting any registration of transfer as provided above, except for any costs or expenses of delivery other than by regular mail and except that the Issuer will require the payment by a transferee Noteholder of a sum sufficient to cover any stamp duty, tax or other governmental charge that may be imposed in relation to the transfer or registration.

#### 14.7 **Further restrictions on transfer**

In addition to the restriction imposed in Condition 14.1 (*No Transfer to a Specified Person*), the Note may not be transferred to any person other than in compliance with the provisions of:

- (a) the Prospectus (Directive 2003/71/EC) Regulations 2005 (as amended) and any Central Bank of Ireland ("**Central Bank**") rules issued and / or in force pursuant to Section 1363 of the Companies Act;
- (b) the Companies Act;
- (c) the European Communities (Markets in Financial Instruments) Regulations 2007 (as amended) and it will conduct itself in accordance with any rules or codes of conduct and any conditions or requirements, or any other enactment, imposed or approved by the Central Bank;

- (d) the Market Abuse (Directive 2003/6/EC) Regulations 2005 (as amended) and any Central Bank rules issued and / or in force pursuant to Section 1370 of the Companies Act; and
- (e) the Central Bank Acts 1942 to 2015 (as amended) and any codes of conduct rules made under Section 117(1) of the Central Bank Act 1989.

#### **14.8 Transfer in breach of this Condition**

Any purported transfer of the Note other than as permitted in this Condition 14 (*Transfer of the Note*) shall be null and void.

### **15 NOTE TERMINATION EVENTS**

Each of the following events will constitute a Note Termination Event in respect of the Note:

- (a) the Issuer fails to perform or observe any term, covenant or agreement in any material respect contained in these Conditions on its part to be performed or observed and any failure shall remain unremedied for twenty (20) Business Days, after the earlier of:
  - (i) the date on which the Issuer has knowledge of that failure; or
  - (ii) the date on which written notice of that failure, requiring the same to be remedied, shall have been given by the Noteholder and received by the Issuer; or
- (b) an Insolvency Event occurs with respect to the Issuer or it is or becomes subject to Insolvency Proceedings.

### **16 NOTICE OF NOTE TERMINATION EVENT**

So long as any amount remains outstanding under the Note, the Issuer will promptly upon becoming aware of any Note Termination Event give notice in writing thereof to the Noteholder.

### **17 EFFECT OF NOTE TERMINATION EVENT**

#### **17.1 Noteholder declaration**

At any time after the occurrence of a Note Termination Event, the Noteholder may declare by written notice to the Issuer (with a copy to the Registrar and the Investment Manager) the Principal Amount Outstanding to be immediately due and payable together with accrued interest thereon to the date of redemption and any other sums then owed by the Issuer hereunder.

#### **17.2 Withdrawal of notice by the Noteholder**

A Noteholder may, at its option, by notice in writing to the Issuer, withdraw any notice previously given under Condition 17.1 (*Noteholder declaration*) whereupon such notice shall cease to have effect.

### 17.3 **Extinguishment of claims**

After realisation of the Portfolio and distribution of the net proceeds thereof by the Issuer, the Noteholder shall not take any further steps against the Issuer or any of its assets to recover any sums unpaid in respect of the Note and all claims, debts and obligations against the Issuer in respect of any such unpaid sum shall be extinguished.

## 18 **FURTHER ISSUES**

Subject to the prior written consent of the Noteholder, the Issuer may from time to time create and issue further notes having the same terms and conditions in all material respects as the Note so that such further issue shall (a) be consolidated and form a single series with the Note as the Issuer may determine at the time of their issue or (b) form a separate and distinguishable series of notes.

## 19 **GENERAL**

### 19.1 **Remedies and waivers**

No failure by the Noteholder to exercise, nor any delay by the Noteholder in exercising any right or remedy in respect of the Note shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any other rights or remedies (whether provided by law or otherwise).

### 19.2 **Partial invalidity**

If, at any time, any provision hereof is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

### 19.3 **No security**

By its registration on the Register, the Noteholder shall be deemed to acknowledge and agree that none of its rights and none of the Issuer's obligations under the Note shall be secured.

### 19.4 **Modification**

Any modification to these Conditions must be agreed in writing between the Issuer and the Noteholder.

### 19.5 **Information**

The Investment Manager shall provide the Noteholder with any reports prepared by the Investment Manager from time to time in accordance with the terms of the Investment Management Agreement (which shall include the performance of the Portfolio), copies of which will be made available (in either physical or electronic format) during usual business hours on any weekday (excluding Saturdays, Sundays and public holidays) at the registered office of the Issuer.

## 20 **CORPORATE OBLIGATIONS**

No recourse under any obligation, covenant (express or implied), or agreement (each an "**obligation**") of any party (acting in any capacity whatsoever) contained in the Note shall be had against any former, current or future shareholder, officer, agent, advisor, employee or director (each, in respect of the relevant party, a "**connected person**") of the Issuer, by the

enforcement of any assessment or by any proceeding, by virtue of any statute or otherwise, it being expressly agreed and understood that the obligations under the Note are corporate obligations of the Issuer and no personal liability shall attach to, or be incurred by, any connected person relating to a party under, or by reason of, any obligation under the Note, and that any and all personal liability for breach of a party's obligation, either at law or by statute or constitution, by any connected person is waived by the Noteholder as a condition of, and consideration for the issue of, the Note.

This Condition 20 (*Corporate obligations*) shall survive the redemption and cancellation of the Note.

## 21 NO PETITION AGAINST THE ISSUER

The Noteholder undertakes to the Issuer that it shall not, nor shall any party on its behalf, at any time institute, or join any person instituting, against the Issuer, or any or all of its revenues and assets:

- (a) any Insolvency Proceedings;
- (b) any petition for the appointment of a receiver, examiner, administrator, trustee, liquidator, sequestrator or similar officer of it; or
- (c) any *ex parte* proceedings.

This Condition 21 (*No petition against the Issuer*) shall survive the redemption and cancellation of the Note.

## 22 LIMITED RECOURSE

Notwithstanding any provision in these Conditions, the Noteholder agrees and acknowledges with the Issuer that:

- (a) the obligations of the Issuer arising under the Note are limited recourse obligations of the Issuer which are payable solely from the Portfolio after payment of all Senior Obligations, payments and claims which rank in priority to payments to the Noteholder under the Note;
- (b) it will have recourse in respect of any amount, claim or obligation due or owing to it by the Issuer (the "**Claims**") only to the extent of available funds pursuant to (a) above after all prior ranking claims have been satisfied and discharged in full; and
- (c) after the application of such funds, the Issuer will not have any assets available for payment of its obligations under the Note and any Claims will accordingly be extinguished to the extent of any shortfall.

This Condition 22 (*Limited recourse*) shall survive the redemption and cancellation of the Note.

## 23 NOTICES

### 23.1 Notices to the Issuer

Any notice or other communication to be given to the Issuer under these Conditions or for the purposes of the Note shall be in writing and shall be duly expressed to be a notice hereunder and shall be treated as properly served or given if hand delivered or sent by registered post to

the registered office of the Issuer and addressed as follows: The Directors, 2<sup>nd</sup> Floor, Beaux Lane House, Mercer Street Lower, Dublin 2, Ireland.

**23.2 Notices to the Noteholder**

Any notice or other communication to be given to the Noteholder under these Conditions or for the purposes of the Note shall be in writing and shall be duly expressed to be a notice hereunder and shall be treated as properly served or given if hand delivered or sent by post to the postal address given for the Noteholder in the Register or sent by email to the email address given for the Noteholder in the Register.

**23.3 Effectiveness of notices**

Any notice or other communication given in accordance with this Condition 23 (Notices) shall be deemed to have been received by the recipient in the case of a letter which is hand delivered, when actually delivered, in the case of a letter which is sent by post or registered post, on the second day after posting and in the case of transmission by email, at the time of transmission provided that in the case of any notice received on a day which is not a Business Day or after 6 p.m. Dublin time on any Business Day shall be deemed to have been received on the next following Business Day.

**24 GOVERNING LAW AND JURISDICTION**

**24.1 Governing law**

These Conditions and the Note and any non-contractual obligations arising out of or in relation to these Conditions or the Note shall be governed by, and shall be construed in accordance with, the laws of Ireland.

**24.2 Jurisdiction**

The courts of Ireland shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Note or these Conditions and that accordingly any suit, action or proceedings arising out of or in connection with the Note or these Conditions shall be brought in such courts.

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## TAXATION

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### Irish Tax Law

*The following is a summary of certain Irish tax consequences of the purchase, ownership and disposition of the Note. The summary does not purport to be a comprehensive description of all of the tax considerations that may be relevant to a decision to purchase, own or dispose of the Note. The summary relates only to the position of persons who are the absolute beneficial owners of the Note and may not apply to certain other classes of persons such as dealers in securities.*

*The summary is based upon Irish tax laws and the practice of the Irish Revenue Commissioners as in effect on the date of these Listing Particulars, which are subject to prospective or retroactive change. The summary does not constitute tax or legal advice and the comments below are of a general nature only. Prospective investors in the Note should consult their own advisors as to the Irish or other tax consequences of the purchase, beneficial ownership and disposition of the Note including, in particular, the effect of any state or local tax laws.*

### Income Tax

In general, persons who are resident in Ireland are liable to Irish taxation on their world-wide income whereas persons who are not resident in Ireland are only liable to Irish taxation on their Irish source income. All persons are under a statutory obligation to account for Irish taxation on a self-assessment basis and there is no requirement for the Irish Revenue Commissioners to issue or raise an assessment.

The Note issued by the Issuer may be regarded as property situate in Ireland (and hence Irish source income) on the grounds that a debt is deemed to be situate where the debtor resides. However, the interest earned on the Note is exempt from income tax if paid to a person who is not a resident of Ireland and who for the purposes of Section 198 of the TCA is regarded as being a resident of a relevant territory. A relevant territory for this purpose is a Member State of the European Communities (other than Ireland) or not being such a Member State a territory with which Ireland has entered into a double tax treaty that has the force of law or, on completion of the necessary procedures, will have the force of law and such double tax treaty contains an article dealing with interest or income from debt claims. A list of the countries with which Ireland has entered into a double tax treaty is available on [www.revenue.ie](http://www.revenue.ie).

Relief from Irish income tax may also be available under other exemptions contained in Irish tax legislation or under the specific provisions of a double tax treaty between Ireland and the country of residence of the holder of the Note.

If the above exemptions do not apply it is understood that there is a long standing unpublished practice whereby no action will be taken to pursue any liability to such Irish tax in respect of persons who are regarded as not being resident in Ireland except where such persons:

- a) are chargeable in the name of a person (including a trustee) or in the name of an agent or branch in Ireland having the management or control of the interest; or
- b) seek to claim relief and/or repayment of tax deducted at source in respect of taxed income from Irish sources; or
- c) are chargeable to Irish corporation tax on the income of an Irish branch or agency or to income tax on the profits of a trade carried on in Ireland to which the interest is attributable.

There can be no assurance that this practice will continue to apply.

## Withholding Taxes

In general, withholding tax (currently at the rate of 20%) must be deducted from interest payments made by an Irish company such as the Issuer. However, Section 246 TCA ("**Section 246**") provides that this general obligation to withhold tax does not apply in respect of, *inter alia*, interest payments made by the Issuer to a person, who by virtue of the law of the relevant territory, is resident for the purposes of tax in a relevant territory (see above for details). This exemption does not apply if the interest is paid to a company in connection with a trade or business which is carried on in Ireland by the company through a branch or agency.

Apart from Section 246, Section 64 TCA ("**Section 64**") provides for the payment of interest on a "**Quoted Eurobond**" without deduction of tax in certain circumstances. A Quoted Eurobond is defined in Section 64 as a security which:

- i) is issued by a company;
- ii) is quoted on a recognised stock exchange (this term is not defined but is understood to mean an exchange which is recognised in the country in which it is established such as the Irish Stock Exchange); and
- iii) carries a right to interest.

There is no obligation to withhold tax on Quoted Eurobonds where:

- (a) the person by or through whom the payment is made is not in Ireland, or
- (b) the payment is made by or through a person in Ireland, and
  - i) the Quoted Eurobond is held in a recognised clearing system (Euroclear, Clearstream Banking SA, Clearstream Banking AG and the Depository Trust Company of New York have, amongst others, been designated as recognised clearing systems); or
  - ii) the person who is the beneficial owner of the Quoted Eurobond and who is beneficially entitled to the interest is not resident in Ireland and has made an appropriate written declaration to this effect.

In certain circumstances, Irish encashment tax may be required to be withheld at the standard rate (currently at the rate of 20%) from interest on any note, where such interest is collected by a person in Ireland on behalf of any holder of the Note.

## Capital Gains Tax

A holder of the Note will not be subject to Irish taxes on capital gains provided that such noteholder is neither resident nor ordinarily resident in Ireland and such noteholder does not have an enterprise, or an interest in an enterprise, which carries on business in Ireland through a branch or agency or a permanent representative to which or to whom the Note are attributable.

## Capital Acquisitions Tax

If the Note is comprised in a gift or inheritance taken from an Irish domiciled, resident or ordinarily resident donor or if the donee / successor is resident or ordinarily resident in Ireland, or if the Note is regarded as property situate in Ireland, the donee / successor may be liable to Irish capital acquisitions tax. As a result, a donee / successor may be liable to Irish capital acquisitions tax, even though neither the donor nor the donee / successor may be domiciled, resident or ordinarily resident in Ireland at the relevant time.

## Stamp duty



For as long as the Issuer is a “**qualifying company**” within the meaning of Section 110, no Irish stamp duty will be payable on either the issue or transfer of the Note, provided that the money raised by the issue of the Note is used in the course of the Issuer’s business.

## **FATCA**

Ireland has an intergovernmental agreement with the United States of America (the “**IGA**”) in relation to FATCA, of a type commonly known as a ‘model 1’ agreement. Ireland has also enacted regulations to introduce the provisions of the IGA into Irish law. The Issuer intends to carry on its business in such a way as to ensure that it is treated as complying with FATCA, pursuant to the terms of the IGA and applicable Irish regulations. Unless an exemption applies, the Issuer shall be required to register with the US Internal Revenue Service as a ‘model 1 reporting financial institution’ for FATCA purposes and report information to the Irish Revenue Commissioners relating to the Noteholder who, for FATCA purposes, are specified US persons, non-participating financial institutions or non-financial foreign entities that are controlled by specified US persons.

Under the terms of the IGA, the Issuer should generally not be subject to FATCA withholding tax in respect of its US source income for so long as it complies with its FATCA obligations. FATCA withholding tax would only be envisaged to arise on US source payments to the Issuer if it did not comply with its FATCA registration and reporting obligations and the US Internal Revenue Service specifically identified the Issuer as being a ‘non-participating financial institution’ for FATCA purposes.

Any information reported by the Issuer to the Irish Revenue Commissioners will be communicated to the US Internal Revenue Service pursuant to the IGA. It is possible that the Irish Revenue Commissioners may also communicate this information to other tax authorities pursuant to the terms of any applicable double tax treaty, intergovernmental agreement or exchange of information regime.

If the Issuer cannot comply with its FATCA obligations (see ‘Information required from Noteholder’ below), the Issuer could become subject to US FATCA withholding tax in respect of its US source income if the US Internal Revenue Service specifically identified the Issuer as being a ‘non-participating financial institution’ for FATCA purposes. Any such US FATCA withholding tax would negatively impact the financial performance of the Issuer and the Noteholder may be adversely affected in such circumstances.

## **Common Reporting Standard**

The OECD Common Reporting Standard regime (“**CRS**”) was adopted by the European Union in Directive 2014/107/EU. In Ireland, legislation has been introduced to adopt the CRS in Ireland which came into effect from 1 January 2016. The CRS has replaced the previous European information reporting regime in respect of savings income under Directive 2003/48/EC (commonly known as the EU Savings Directive regime), which was repealed in Ireland with effect from 1 January 2016.

Under the CRS and implementing legislation, the Issuer is expected to be required to report information to the Irish Revenue Commissioners relating to the Noteholder, including the identity, residence and tax identification number of the Noteholder and details as to the amount of income and sale or redemption proceeds received by the Noteholder in respect of the Note. This information will be shared by the Irish Revenue Commissioners with tax authorities in other Member States and other jurisdictions which implement the CRS.

## **Information required from Noteholder**

The Issuer will require the Noteholder to certify information relating to their status for the purposes of both FATCA and CRS, including their jurisdiction of tax residence, and to provide other forms, documentation and information in relation to their status for the purposes of these tax reporting regimes. The Issuer may be unable to comply with its obligations under FATCA and CRS if the Noteholder do not provide the required certifications and information. Failure to comply with FATCA and CRS could have a negative impact on the Issuer and the Noteholder, including the imposition of certain withholding taxes.

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## SELLING RESTRICTIONS

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### General

All applicable laws and regulations must be observed in any jurisdiction in which the Note may be offered, sold or delivered. No person may directly or indirectly offer, sell, resell, reoffer or deliver the Note or distribute any document, circular, advertisement or other offering material in any country or jurisdiction except under circumstances that will result, to the best of its knowledge and belief, in compliance with all applicable laws and regulations.

The Issuer does not represent represents that the Note 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.

### European Economic Area

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a **"Relevant Member State"**), with effect from (and including) the date on which the Prospectus Directive is implemented in that Relevant Member State (the **"Relevant Implementation Date"**), there has not been and there will not be an offer of the Note to the public in that Relevant Member State prior to the publication of a prospectus in relation to the Note which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that an offer of the Note to the public in that Relevant Member State may, with effect from (and including) the Relevant Implementation Date, be made:

- (a) to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- (b) to fewer than 150 natural or legal persons per Member State (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the Issuer for any such offer; or
- (c) in any other circumstances falling within Article 3(2) of the Prospectus Directive.

For the purposes of the preceding paragraphs, the expression **"an offer of Securities to the public"** in relation to the Note 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 Note to be offered so as to enable an investor to decide to purchase or subscribe for the Note, 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 amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in each Relevant Member State and the expression **"2010 PD Amending Directive"** means Directive 2010/73/EU.

### Ireland

The Noteholder by its purchase of the Note shall be deemed to have represented, warranted and agreed that it shall not offer, sell, place or underwrite, and will not offer, sell, place or underwrite the Note, or do anything in Ireland in respect of the Note, otherwise than in conformity with the provisions of:

- (a) the Prospectus (Directive 2003/71/EC) Regulations 2005 (as amended) and any Central Bank rules issued and / or in force pursuant to Section 1363 of the Companies Act;
- (b) the Companies Act;
- (c) the European Communities (Markets in Financial Instruments) Regulations 2007 (as amended) and it will conduct itself in accordance with any rules or codes of conduct and any

conditions or requirements, or any other enactment, imposed or approved by the Central Bank;

- (d) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse, the European Union (Market Abuse) Regulations 2016 and any Central Bank rules issued and / or in force pursuant to Section 1370 of the Companies Act; and
- (e) the Central Bank Acts 1942 to 2015 (as amended) and any codes of conduct rules made under Section 117(1) of the Central Bank Act 1989.

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## GENERAL INFORMATION

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### Documents on display

For the life of these Listing Particulars and for as long as the securities are listed on the Official List of the ISE and admitted to trading on the Global Exchange Market copies of the following documents will be available for inspection in physical format during customary business hours on any working day at the registered office of the Paying Agent and the Issuer:

- (a) these Listing Particulars and any amendments and supplements thereto;
- (b) the constitutional documents of the Issuer; and
- (c) any audited financial statements of the Issuer once they have been published.

### Consents and authorisations

The Issuer has obtained all necessary consents, approvals and authorisations in Ireland (if any) in connection with the issue of the Note and entry into the Transaction Documents relating thereto. The issue of the Note, the entry into the Transaction Documents relating thereto and the listing of the Note on the Irish Stock Exchange was duly authorised by resolutions of the Board of Directors of the Issuer on 19 July 2017.

### Post-issuance information

The Issuer does not intend to provide any post-issuance information in relation to the Note or the performance of any underlying assets.

### Litigation

Since its date of incorporation, the Issuer is not involved in any legal, governmental, or arbitration proceedings nor, so far as the Issuer is aware, are any such proceedings pending or threatened of which the Issuer is aware, which may have, or had in the recent past, significant effects on the Issuer's financial position or profitability.

### No significant or material adverse change

Save as disclosed in these Listing Particulars, there has been no significant or material adverse change in the financial or trading position or prospects of the Issuer since its date of incorporation.

### Financial year of Issuer

The Issuer commenced operations on 21 June 2017 but has not prepared financial statements as of the date of these Listing Particulars. The initial financial year of the Issuer will run from its date of incorporation to 31 December 2017, and each subsequent financial year shall end on 31 December.

### Expenses relating to admission to trading on the Irish Stock Exchange

The estimated total expenses relating to admission to trading on the Irish Stock Exchange is EUR 14,641.20.

**REGISTERED OFFICE OF THE ISSUER**

**FURSAN EUROPEAN DISTRESSED DAC**

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**MATHESON**

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**LEGAL ADVISER**

*To the Issuer as to Irish law*

**MATHESON**

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