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Nothing in this electronic transmission constitutes an offer of securities for sale in any jurisdiction where it is unlawful to do so. The Henley Series I Notes have not been, and will not be, registered under the Securities Act, or the securities laws of any state of the U.S. or any other jurisdiction and the Henley Series I Notes may not be offered or sold within the U.S. or to, or for the account or benefit of, U.S. persons (as defined in Regulation S under the Securities Act (**U.S. Persons**)), except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state or local securities laws.

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The document has been sent to you in the belief that you are (a) a person of the kind described in Article 49(2)(a) to (d) (high net worth companies, unincorporated associations, etc.) of the UK Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 or who otherwise fall within an exemption set forth in such

Order so that section 21(1) of the Financial Services and Markets Act 2000 (as amended) does not apply to the Issuer and (b) a person to whom the document can be sent lawfully in accordance with all other applicable securities laws. If this is not the case then you must return the document immediately.

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# NAPIER PARK EUROPE LOAN MANAGEMENT DESIGNATED ACTIVITY COMPANY

*(Incorporated under the laws of Ireland with limited liability under registered number 570563)*

## EUR 181,150,000 Henley Series I Notes

Issue Price of the Henley Series I Notes: 100 per cent.

Napier Park Europe Loan Management Designated Activity Company (the **Issuer**) will issue EUR 181,150,000 Henley Series I Notes (the **Henley Series I Notes**). The Henley Series I Notes will be issued pursuant to a note issuing and purchasing agreement between each initial Noteholder and the Issuer (each a **Henley Series I Note Issuing and Purchase Agreement**) to be dated on or about 29 March 2019 (the **Issue Date**). The Henley Series I Notes will be secured pursuant to a trust deed (the **Henley Series I Trust Deed**) between the Issuer and U.S. Bank Trustees Limited (the **Trustee**) to be dated on or about 29 March 2019 (the **Issue Date**).

Concurrently with the issue of the Henley Series I Notes, the Issuer will subscribe for (a) profit-participating notes and (b) class E shares, in each case issued by NP Europe Loan Management I Designated Activity Company (**NP ELM**), which shall form part of the security for the Henley Series I Notes.

The Henley Series I Notes are profit participating notes and as such, distributions, interest proceeds and principal proceeds received in respect of the Mortgaged Property (as defined below) shall, subject to and in accordance with the Application of Proceeds (as defined below), be paid to Noteholders on the first Business Day after receipt thereof by the Issuer, as provided further herein.

Application has been made to Euronext Dublin for the Henley Series I Notes to be admitted to the Official List (the **Official List**) and to trading on the Global Exchange Market of Euronext Dublin (the **Global Exchange Market**). The Global Exchange Market is not a regulated market for the purposes of Directive 2014/65/EU (as amended) (the **Markets in Financial Instruments Directive**). There can be no assurance that any such approval will be granted or, if granted, that such listing and admission to trading will be maintained. Application has been made to Euronext Dublin for the approval of this document as listing particulars (**Listing Particulars**).

The Henley Series I Notes are limited recourse obligations of the Issuer which are payable solely out of amounts received by or on behalf of the Issuer in respect of the Mortgaged Property (as defined herein). The net proceeds of the realisation of the security over the Mortgaged Property upon acceleration of the Henley Series I Notes following an Event of Default (as defined herein) may be insufficient to pay all amounts due on the Henley Series I Notes after making payments to other creditors of the Issuer ranking prior thereto or *pari passu* therewith. In the event of a shortfall in such proceeds, the Issuer will not be obliged to pay, and the other assets of the Issuer will not be available for payment of such shortfall. All claims in respect of such shortfall shall be extinguished. See Condition 7 (*Security for the Henley Series I Notes*).

**For a discussion of certain factors and risks regarding the Issuer and the Henley Series I Notes that should be considered by prospective purchasers of the Henley Series I Notes, see "Risk Factors".**

The Issuer has not been and will not be registered under the United States Investment Company Act of 1940, as amended (the **Investment Company Act**) and the Henley Series I Notes have not been and will not be registered under the United States Securities Act of 1933, as amended (the **Securities Act**). Consequently, the Henley Series I Notes may not be offered, sold, resold, delivered or transferred within the United States or to, or for the account or benefit of, U.S. persons (as such term is defined in Regulation S under the Securities Act) except in accordance with the Securities Act or an exemption therefrom and under circumstances which will not require the Issuer to register under the Investment Company Act. The Henley Series I Notes may only be re-offered, resold, delivered or transferred to persons that qualify as a person (an **Eligible Investor**) who is a Qualifying Noteholder and is either (a) not a U.S. person (as such term is defined in Regulation S under the Securities Act), (b) an "accredited investor" as defined in paragraph (1), (2), (3) or (7) of Rule 501(a) under the Securities Act and a "qualified purchaser" as defined in Section 2(a)(51) of the Investment Company Act or (c) an "accredited investor" as defined in Rule 501(a) under the Securities Act and a "knowledgeable employee" as defined in Rule 3c-5 under the Investment Company Act.

Each purchaser of the Henley Series I Notes in making its purchase will be required to make or be deemed to have made certain acknowledgements, representations and agreements as set forth under "*Transfer Restrictions*". The Henley Series I Notes are subject to other restrictions on transferability and resale as set forth in "*Transfer Restrictions*".

The Henley Series I Notes are offered by the Issuer. Any Henley Series I Notes to be offered to a prospective purchaser on the date of issuance will be offered to prospective purchasers in compliance with the selling restrictions contained herein. The Henley Series I Notes are offered when, as and if issued by the Issuer, subject to prior sale or withdrawal, cancellation or modification of the offer without notice and subject to approval of certain legal matters by counsel and certain other conditions. It is expected that delivery of the Henley Series I Notes will be made on or about the Issue Date, against payment in immediately available funds.

The Henley Series I Notes will be issued in registered definitive form and will be represented by definitive certificates and will be registered in the name of the relevant Henley Series I Noteholder on the Issue Date.

The date of this Private Placement Memorandum is 2 April 2019.

## RELIANCE ON THIS PRIVATE PLACEMENT MEMORANDUM

Each capitalised term used herein shall have the meaning set forth in the section entitled "*Master Definitions*" in this Private Placement Memorandum (the **Private Placement Memorandum**).

THE SERIES III NOTES WILL BE OBLIGATIONS OF THE ISSUER ONLY. THE SERIES III NOTES WILL NOT BE OBLIGATIONS OF, OR THE RESPONSIBILITY OF, OR GUARANTEED BY, ANY PERSON OTHER THAN THE ISSUER. NO LIABILITY WHATSOEVER IN RESPECT OF ANY FAILURE BY THE ISSUER TO PAY ANY AMOUNT DUE UNDER THE SERIES III NOTES SHALL BE ACCEPTED BY ANY PERSON OTHER THAN THE ISSUER.

The Issuer accepts responsibility for the information contained in this offering 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), such information is in accordance with the facts and does not omit anything likely to affect the import of such information

None of NP ELM, Napier Park Global Capital (US) LP (the **Portfolio Adviser**), its Affiliates, Napier Park Global Capital Ltd, Napier Park Global Capital GmbH, the Trustee, any Agent or the Corporate Services Provider (each as defined below and together, the **Transaction Parties**) accept any responsibility for the accuracy and completeness of any information contained in this Private Placement Memorandum. The delivery of this Private Placement Memorandum at any time does not imply that the information herein is correct at any time subsequent to the date of this Private Placement Memorandum.

None of the Transaction Parties or any other party has separately verified the information contained in this Private Placement Memorandum and, accordingly, neither the Transaction Parties nor any other party makes any representation, recommendation or warranty, express or implied, regarding the accuracy, adequacy, reasonableness or completeness of the information contained in this Private Placement Memorandum or in any further notice or other document which may at any time be supplied in connection with the Henley Series I Notes or their distribution or accepts any responsibility or liability therefor. None of the Transaction Parties or any other party undertakes to review the financial condition or affairs of the Issuer during the life of the arrangements contemplated by this Private Placement Memorandum nor to advise any investor or potential investor in the Henley Series I Notes of any information coming to the attention of any of the aforementioned parties which is not included in this Private Placement Memorandum. None of the Transaction Parties accepts any responsibility for the accuracy or completeness of any information contained in this Private Placement Memorandum.

This Private Placement Memorandum does not constitute an offer of, or an invitation by or on behalf of, the Issuer, or any Transaction Party or any other person to subscribe for or purchase any of the Henley Series I Notes. The distribution of this Private Placement Memorandum and the offering of the Henley Series I Notes in certain jurisdictions may be restricted by law. Persons into whose possession this Private Placement Memorandum comes are required to inform themselves about and to observe any such restrictions. In particular, the communication constituted by this Private Placement Memorandum is directed only at persons who (i) are outside the United Kingdom and are offered and accept this Private Placement Memorandum in compliance with such restrictions or (ii) are persons falling within Article 49(2)(a) to (d) (High net worth companies, unincorporated associations etc.) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 or who otherwise fall within an exemption set forth in such Order so that Section 21(1) of the Financial Services and Markets Act 2000, as amended, does not apply to the Issuer (all such persons together being referred to as **relevant persons**). This communication must not be distributed to, acted on or relied on by persons who are not relevant persons. Any investment or investment activity to which this communication relates is available only to relevant persons and will be engaged in only with relevant persons. For a description of certain further restrictions on offers and sales of Henley Series I Notes and distribution of this Private Placement Memorandum, see "*Transfer Restrictions*" below. The Henley Series I Notes are not intended to be offered or sold and should not be offered or sold to retail investors. For these purposes, a retail investor means (i) a retail client as defined in point (11) of article 4(1) of directive 2014/65/EU or (ii) a customer within the

meaning of Directive 2016/97/EU, where that customer would not qualify as a professional client as defined in point (10) of article 4(1) of directive 2014/65/EU.

No person other than the Issuer, NP ELM, the Portfolio Adviser or any Sub-Portfolio Adviser is authorised to give any information or to make any representation in connection with this Private Placement Memorandum. Information given, or representations made, by any person other than the Issuer, NP ELM or the Portfolio Adviser must not be relied upon as having been authorised by the Issuer, NP ELM or the Portfolio Adviser. Any investment made by any person on the basis of any information or representations not contained in or inconsistent with this Private Placement Memorandum shall be solely at the risk of the investor.

This Private Placement Memorandum refers to certain events as having occurred and documents as having been entered into which may not have occurred or been entered into at the date that it is made available but which the directors expect will occur or be entered into thereafter. In addition, certain information contained in this Private Placement Memorandum constitutes "forward-looking statements" which can be identified by the use of forward-looking terminology such as "may," "will," "should," "expect," "anticipate," "estimate," "intend," "continue," or "believe" or the negatives thereof or other variations thereon or comparable terminology. Due to various risks and uncertainties, including those set forth under "*Risk Factors*" in this Private Placement Memorandum, actual events or results or the actual performance of the Issuer may differ materially from those reflected or contemplated in such forward-looking statements.

This Private Placement Memorandum is not intended to provide any advice relating to legal, taxation or investment matters and prospective investors should not construe it as containing any such advice. No representation is made regarding the legal, accounting, regulatory or tax treatment of an investment in any jurisdiction relevant to a recipient of this Private Placement Memorandum. Persons interested in acquiring the Henley Series I Notes should consult their own professional advisers prior to making a decision to invest in the Henley Series I Notes.

This Private Placement Memorandum does not constitute an offer or solicitation to any person in any jurisdiction in which such offer or solicitation is not authorised or to any person to whom it would be unlawful to make such offer or solicitation.

Except to the extent specifically agreed otherwise in writing with the Issuer, NP ELM, the Portfolio Adviser and/or a Sub-Portfolio Adviser:

- (a) neither the Issuer, NP ELM, the Portfolio Adviser nor any Sub-Portfolio Adviser are providing you with investment advice. Even if the Issuer, NP ELM, the Portfolio Adviser or any Sub-Portfolio Adviser possess information as to your objectives in relation to any transaction, series of transactions or trading strategy, this will not be deemed sufficient for any assessment of suitability for you of any transaction, series of transactions or trading strategy.
- (b) neither the Issuer, NP ELM, the Portfolio Adviser nor any Sub-Portfolio Adviser make any recommendation as to the suitability of any product or transactions mentioned in this Private Placement Memorandum.
- (c) neither the Issuer, NP ELM, the Portfolio Adviser, nor any Sub-Portfolio Adviser is acting as your advisor, fiduciary or agent and is not managing your account. Prior to entering into any transaction, you should determine, without reliance on the Issuer, NP ELM, the Portfolio Adviser or any Sub-Portfolio Adviser, the economic risks or merits, as well as the legal, tax and accounting characteristics and consequences of the transaction and that you are able to assume these risks.
- (d) any trading or investment decisions you take are in reliance on your own analysis and judgment and/or that of your advisers and not in reliance on the Issuer, NP ELM, the Portfolio Adviser or any Sub-Portfolio Adviser.

NP ELM is not hereby offering any securities and accordingly this Private Placement Memorandum is not to be regarded as having been authorised or issued by NP ELM. NP ELM does not have an offering document or equivalent document.

This Private Placement Memorandum may be translated into other languages. Any such translation shall have the same meaning as this English language Private Placement Memorandum. To the extent that there is any inconsistency between this English language Private Placement Memorandum and the Private Placement Memorandum in another language, this English language Private Placement Memorandum will prevail, except, to the extent (but only to the extent) required by the laws of any jurisdiction where the Henley Series I Notes are sold, that in an action based upon disclosure in a Private Placement Memorandum in a language other than English, the language of the Private Placement Memorandum on which such action is based shall prevail.

By investing in the Henley Series I Notes each investor is deemed to represent that:

- (a) *Non-Reliance.* It is acting for its own account and it has made its own independent decisions to invest in the Henley Series I Notes and as to whether the investment in the Henley Series I Notes is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the Issuer, any Transaction Party, or their respective Affiliates as investment advice or as a recommendation to invest in the Henley Series I Notes, it being understood that information and explanations related to the terms and conditions of the Henley Series I Notes shall not be considered to be investment advice or a recommendation to invest in the Henley Series I Notes. No communication (written or oral) received from the Issuer, any Transaction Party or their respective Affiliates shall be deemed to be an assurance or guarantee as to the expected results of the investment in the Henley Series I Notes.
- (b) *Assessment and Understanding.* It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice) and understands and accepts the terms and conditions and the risks of the investment in the Henley Series I Notes. It is also capable of assuming, and assumes, the risks of the investment in the Henley Series I Notes.
- (c) *Status of Parties.* None of the Issuer, any Transaction Party or their respective Affiliates is acting as a fiduciary for or adviser to it in respect of the investment in the Henley Series I Notes.

Any trading or investment decisions you take are in reliance on your own analysis and judgment and/or that of your advisers and not in reliance on the Issuer, NP ELM, the Portfolio Adviser or any Sub-Portfolio Advisers.

Any opinions and estimates are judgments as of the date of this Private Placement Memorandum and are subject to change without notice. Indications of the potential return of the investment have been given in good faith but are not guaranteed and are subject to uncertainties beyond control and should not be relied upon by investors in forming investment decisions.

Any websites referred to herein do not form part of this Private Placement Memorandum.

In this Private Placement Memorandum, unless otherwise specified or the context otherwise requires, all references to **Euro**, **euro**, **€** and **EUR** are to the lawful currency of the Member States of the European Union that have adopted and retain the single currency in accordance with the Treaty establishing the European Community, as amended from time to time; provided that if any member state or states ceases to have such single currency as its lawful currency (such member state(s) being the **Exiting State(s)**), the euro shall, for the avoidance of doubt, mean for all purposes the single currency adopted and retained as the lawful currency of the remaining member states and shall not include any successor currency introduced by the Exiting State(s).

In connection with the issue of the Henley Series I Notes, no stabilisation will take place and the Issuer will not be acting as stabilising manager in respect of the Henley Series I Notes.

An investment in the Henley Series I Notes involves a high degree of risk. There can be no assurance that the Issuer's investment objective will be achieved and investment results may vary substantially over time. An investment in the Henley Series I Notes is not intended to be a complete investment programme for any investor. Prospective investors should carefully consider whether an investment in the Henley Series I Notes is suitable for them in light of their circumstances and financial resources and if in doubt should consult their professional or other independent financial advisers (see further below in "*Risk Factors*").

The Issuer is not regulated by the Central Bank of Ireland (the **Central Bank**) as a result of issuing the Henley Series I Notes. Any investment in the Henley Series I Notes does not have the status of a bank deposit and is not within the scope of the deposit protection scheme operated by the Central Bank.

**All recipients of this Private Placement Memorandum, prospective Henley Series I Noteholders and Henley Series I Noteholders are hereby notified that conversations between itself and the Issuer, NP ELM, the Portfolio Adviser or any other party in connection with the Henley Series I Notes may be tape recorded and that such tape recordings may be submitted in evidence to any court or legal proceedings for the purpose of establishing any matters relating to this Private Placement Memorandum or the Henley Series I Notes.**

### **MIFID II Product Governance**

Solely for the purposes of each manufacturer's product approval process, the target market assessment in respect of the Henley Series I Notes has led to the conclusion that: (i) the target market for the Henley Series I Notes is eligible counterparties and professional clients only, each as defined in EU Directive 2014/65/EU and EU Regulation 600/2014/EU on Markets in Financial Instruments (as amended) (**MiFID II**); and (ii) all channels for distribution of the Henley Series I Notes to eligible counterparties and professional clients are appropriate. Any person subsequently offering, selling or recommending the Henley Series I Notes (a "distributor") should take into consideration the manufacturers' target market assessment; however, a distributor subject to MiFID II is responsible for undertaking its own target market assessment in respect of the Henley Series I Notes (by either adopting or refining the manufacturers' target market assessment) and determining appropriate distribution channels.

### **PRIIPs Regulation**

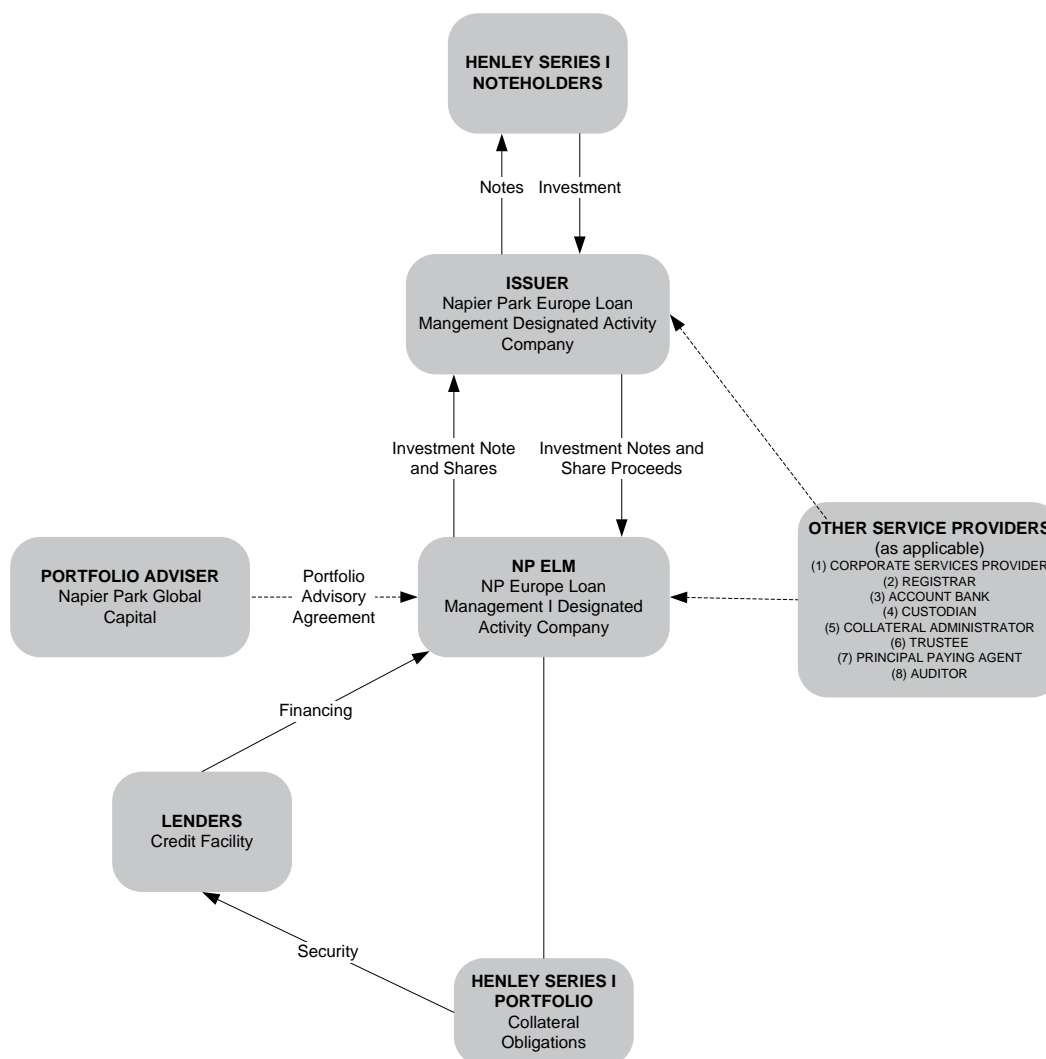
The Henley Series I Notes are not intended to be offered, sold or otherwise made available to and should not be offered, sold or otherwise made available to any retail investor in the European Economic Area (**EEA**). For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of MiFID II; or (ii) a customer within the meaning of Directive 2016/97/EU (as amended, the **Insurance Distribution Directive**), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II. Consequently no key information document required by Regulation (EU) No 1286/2014 (as amended, the **PRIIPs Regulation**) for offering or selling the Henley Series I Notes or otherwise making them available to retail investors in the EEA has been prepared and therefore offering or selling the Henley Series I Notes or otherwise making them available to any retail investor in the EEA may be unlawful under the PRIIPs Regulation.

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## OVERVIEW OF THE TRANSACTION

### 1. STRUCTURE DIAGRAM



### 2. TRANSACTION OVERVIEW

*The following is an overview of the transaction structure and is qualified in its entirety by, and should be read in conjunction with, the more detailed information appearing elsewhere in this Private Placement Memorandum and related documents referred to herein. Capitalised terms not specifically defined in this Private Placement Memorandum have the meanings set out in the section entitled "Master Definitions" below. References to a "Condition" are to the specified Condition in the "Terms and Conditions of the Henley Series I Notes" below and references to "Conditions of the Henley Series I Notes" are to the "Terms and Conditions of the Henley Series I Notes" below. For a discussion of certain risk factors to be considered in connection with an investment in the Henley Series I Notes, see "Risk Factors".*

#### 2.1 General

The Issuer has been established in order to issue the Programme Notes to investors and to use the proceeds thereof to invest in series of investment portfolios to be held from time to time by NP ELM, each such investment by the Issuer being by way of subscription in certain shares and debt in the form of profit participating notes, in each case issued by NP ELM.

Such investment portfolios held by NP ELM shall consist of:

- (i) debt obligations in the form of senior, mezzanine and second lien loans, high yield bonds, floating rate notes and other similar credit assets, CLO securities and investments in CLO warehouse facilities by way of debt and/or equity managed by the Portfolio Adviser (or any Affiliate thereof) (the **Collateral Manager**), and other investments facilitating NP ELM's ability to make CLO Investments, including Retention Financing, but excluding CLO Investments (as defined below) (any such assets held by NP ELM from time to time being **Collateral Obligations**); and
- (III) subordinated tranche securities that are (A) CLO Retention Investments (as defined below) (or if greater, a Controlling Stake in a Retention CLO (as defined below)) as well as (B) investments in other CLOs managed by the Collateral Manager where NP ELM on its own or together with any Napier Funds holds at least a Controlling Stake in such CLO ((A) and (B) together, the **CLO Investments** and the CLO Investments together with the Collateral Obligations, the **Aggregate Portfolio**).

The Issuer will use the proceeds of the issue of the Henley Series I Notes to investors (the **Henley Series I Noteholders**) to invest in a portfolio of Collateral Obligations and CLO Investments held by or on behalf of NP ELM from time to time and designated in the Portfolio Database as forming part of the “*Henley Series I Portfolio*” (the **Henley Series I Portfolio**), such investment by the Issuer being by way of subscription in the class E shares (the **Henley Series I Shares**) and debt in the form of EUR 180,149,995 Henley Series I profit participating notes (the **Henley Series I Investment Notes**), as may be increased from time to time upon the issuance of further notes (the **Further Henley Series I Investment Notes**), in each case issued by NP ELM.

With the benefit of the subscription proceeds of the shares and the profit participating notes, including the Henley Series I Shares and the Henley Series I Investment Notes, from the Issuer, NP ELM will, pursuant to its investment strategy and objectives:

- (a)
  - (i) originate Collateral Obligations in the primary market and acquire Collateral Obligations in the secondary markets; and
  - (ii) invest in CLO Investments,in each case with a view of long term investment in such Collateral Obligations and CLO Investments;
- (b) in conjunction with the Collateral Manager, establish various European CLOs (the **Retention CLOs**) and, in respect of such Retention CLOs:
  - (i) securitise Collateral Obligations by way of selling such Collateral Obligations to the Retention CLOs; and
  - (ii) invest in a portion of the securities issued by the Retention CLOs representing at least 5 per cent. of the maximum portfolio principal amount of the assets in each Retention CLO (even if such portion is greater than a Controlling Stake) (any such notes held by NP ELM being the **CLO Retention Investments**) and commit to retain such investment on an ongoing basis with the intention of satisfying the EU Retention Requirements; and
- (c) in respect of Collateral Obligations not sold to Retention CLOs as described in paragraph (b) above, holding such Collateral Obligations to maturity or, if deemed appropriate pursuant to its investment strategy and objectives, periodically selling such Collateral Obligations.

The economic benefit from the Issuer's investment in NP ELM will accrue to the Issuer through the Issuer's investment in the profit participating notes, including the Henley Series I Investment Notes. The principal source of funds available to NP ELM to fund payments on profit participating notes will be the income, sale proceeds and/or final recoveries deriving from the Aggregate Portfolio in respect of the particular series relating to such

profit participating notes and therefore the principal source of funds available to NP ELM to fund payments on the Henley Series I Investment Notes will be the income, sale proceeds and/or final recoveries deriving from the Henley Series I Portfolio. The economic benefit from the Henley Series I Noteholders' investment in the Issuer will accrue to the Henley Series I Noteholders through the Henley Series I Noteholders' investment in the Henley Series I Notes. The principal source of funds available to the Issuer to finance payments on the Henley Series I Notes will be the income deriving from the Henley Series I Investment Notes and Henley Series I Shares.

NP ELM also intends to raise debt financing from time to time, by way of entry into one or more credit facilities available to it, pursuant to which it may draw loans from time to time in order purchase Collateral Obligations and/or CLO Investments (each, a **Credit Facility**).

## **2.2 The Investment Objective**

The Issuer's investment strategy is to provide investors with exposure to a loan origination and investment company, NP ELM, and through this company to invest in series of portfolios of assets comprising in aggregate the Aggregate Portfolio and to generate attractive risk-adjusted returns from such portfolios. The Issuer intends to pursue its investment strategy by using the proceeds from the issue of notes to invest in shares and profit participating notes issued by NP ELM, including by using the proceeds from the issue of the Henley Series I Notes to invest in the Henley Series I Investment Notes and the Henley Series I Shares.

The investment objective of NP ELM is to generate attractive risk-adjusted returns from its investment in the Aggregate Portfolio through the origination and/or purchase of Collateral Obligations and CLO Investments. Such objective is intended to be achieved by way of a long term investment strategy in the Collateral Obligations and CLO Investments. As part of this strategy, NP ELM intends to utilise the CLO market as a means of obtaining exposure to a diversified pool of Collateral Obligations and CLO Investments. As soon as is reasonably practical and on the availability of appropriate market opportunities, NP ELM intends to establish new Retention CLOs (in conjunction with the Collateral Manager) and sell certain Collateral Obligations to such Retention CLOs. NP ELM will then subscribe for CLO Retention Investments (or, if greater, a Controlling Stake in such Retention CLO), and ensure that it retains at all times the requisite CLO Retention Investments in order to satisfy the EU Retention Requirements. NP ELM will also sell Collateral Obligations to Retention CLOs from time to time during the Retention CLOs reinvestment periods so as to ensure that over 50 per cent. of the total securitised exposures held by the Retention CLOs at all times have been purchased from NP ELM and may also invest in CLO Investments.

Collateral Obligations which are not sold to Retention CLOs are intended to be held by NP ELM until maturity, but may be sold prior to maturity based on NP ELM's assessment and management of the credit, market value and liquidity risk of the Aggregate Portfolio from time to time and in accordance with NP ELM's investment strategy. NP ELM intends to invest predominantly in Collateral Obligations of primarily European obligors, although it will have the ability to acquire Collateral Obligations elsewhere.

Whether assets are held directly by NP ELM or via CLO Investments, it is NP ELM's intention that, in each case, the portfolios will be actively managed (by NP ELM or the Collateral Manager, as the case may be) to minimise default risk and potential loss through comprehensive credit analysis performed by NP ELM (including via the advice provided to it under the Portfolio Advisory Agreement) or the Collateral Manager (as applicable).

NP ELM intends to be classified as an "originator" for the purposes of the EU Retention Requirements and will acquire CLO Retention Investments from Retention CLOs with the intention of complying with the EU Retention Requirements. In order to achieve this, NP ELM will: (a) together with the Collateral Manager, establish the relevant Retention CLO; (b) sell investments to the relevant CLO which it has (i) purchased for its own account initially or (ii) itself or through related entities, directly or indirectly, been involved in the original agreement which created such obligations; (c) during the relevant CLO's reinvestment period, sell investments to the relevant CLO from time to time so as to ensure that over 50 per cent. of the total securitised exposures

held by the relevant CLO have come from NP ELM (such percentage calculated including the principal proceeds received by the relevant CLO in respect of any NP ELM sourced assets); and (d) commit to retain, on an unhedged basis, the CLO Retention Investments in accordance with the EU Retention Requirements. In this regard, NP ELM is of the opinion that (x) it is not an entity that has been established or that operates for the sole purpose of securitizing exposures and (y) it has the capacity to meet a payment obligation from resources not related to the exposures it securitises.

## 2.3 Transaction Parties

### (a) *Issuer*

The Issuer was incorporated as a designated activity company in Ireland under the Irish Companies Act 2014 (as amended) on 23 October 2015 with registration number 570563. The Issuer was established to provide investors with exposure to a loan origination and investment company, NP ELM, and through this company to invest in series of portfolios of assets comprising the Aggregate Portfolio and to generate attractive risk-adjusted returns from such portfolios.

### (b) *NP ELM*

NP ELM was incorporated as a designated activity company in Ireland under the Irish Companies Act 2014 (as amended) on 23 October 2015 with registration number 570564. NP ELM will use the proceeds from the issue of the Henley Series I Investment Notes, the Henley Series I Shares, the issuance of any other profit participating notes and shares and any financing it receives pursuant to any Credit Facility to invest in the Aggregate Portfolio with the intention of generating attractive risk-adjusted returns from the Aggregate Portfolio.

### (c) *Trustee*

U.S. Bank Trustees Limited (the **Trustee**) will be appointed to act as trustee for itself and for the Henley Series I Noteholders in respect of the Henley Series I Notes and as security trustee for the Secured Parties in respect of the Mortgaged Property pursuant to the terms of the Henley Series I Trust Deed.

### (d) *Portfolio Adviser/Sub-Portfolio Advisers*

Napier Park Global Capital (US) LP has been appointed portfolio adviser by NP ELM pursuant to the terms of the portfolio advisory agreement (the **Portfolio Advisory Agreement**) entered into between NP ELM and the Portfolio Adviser.

The terms and conditions of the Portfolio Advisory Agreement allow the Portfolio Adviser to delegate some or all of its functions under the Portfolio Advisory Agreement to one or more Affiliates as described therein (each, a **Sub-Portfolio Adviser** and together the **Sub-Portfolio Advisers**). Permitted Sub-Portfolio Advisers include Napier Park Global Capital Ltd (**Napier UK**) and Napier Park Global Capital GmbH (**Napier Switzerland**). Each of Napier UK and Napier Switzerland have been appointed as a Sub-Portfolio Adviser in order to provide the Portfolio Adviser and NP ELM with advice, research and recommendations in connection with the investment and reinvestment in the Portfolio. The Portfolio Adviser provides a team responsible for advising on the Aggregate Portfolio and this team is supported by internal legal, compliance, risk, accounting and business functions.

The advisory arrangements described above are solely for the provision of advice and services in that substantive investment decisions in respect of the Aggregate Portfolio are taken solely by NP ELM's Investment Committee.

The Portfolio Adviser (or any Affiliate thereof) shall act as collateral manager to CLOs, including Retention CLOs, from time to time. Each such Retention CLO will rebate to NP ELM a *pro rata* share, based on the

proportion of the subordinated tranche securities represented by NP ELM's CLO Retention Investment, of 20 per cent. of the senior management fee received by the Portfolio Advisor (or any Affiliate thereof) acting as collateral manager. For the avoidance of doubt, the senior management fee with respect to the relevant Retention CLO will exclude any incentive/performance fee received by such collateral manager.

(e) *Collateral Administrator*

Elavon Financial Services DAC has been appointed to act as collateral administrator (the **Collateral Administrator**) to NP ELM in respect of the Aggregate Portfolio pursuant to the terms of the agency agreement (the **Agency Agreement**). The Collateral Administrator is required, amongst other things, to prepare the Reports in accordance with the terms of the Agency Agreement.

(f) *Registrar*

U.S. Bank National Association has been appointed to act as registrar (the **Registrar**) in respect of the Henley Series I Notes and the Henley Series I Investment Notes, in each case under and pursuant to the terms of the Agency Agreement.

(g) *Custodian, Account Bank and Principal Paying Agent*

Elavon Financial Services DAC has been appointed as custodian (the **Custodian**) for NP ELM, as account bank (the **Account Bank**) for each of the Issuer and NP ELM pursuant to the terms of the Agency Agreement and as principal paying agent for the Issuer (the **Principal Paying Agent**).

(h) *Corporate Services Provider*

Intertrust Management Ireland Limited has been appointed as corporate services provider (the **Corporate Services Provider**) to each of the Issuer and NP ELM pursuant to the terms of a corporate services agreement (the **Corporate Services Agreement**). Pursuant to this agreement the Corporate Services Provider is required to perform various management and administrative functions on behalf of the Issuer and NP ELM.

(i) *Auditor*

Deloitte, chartered accountants and statutory audit firm, qualified in practice in Ireland, has been appointed as the auditor of each of the Issuer and NP ELM.

### 3. THE HENLEY SERIES I NOTES AND THE HENLEY SERIES I INVESTMENT NOTES

#### 3.1 Status

(a) *Henley Series I Notes*

The Henley Series I Notes will be constituted pursuant to the Henley Series I Trust Deed and issued pursuant to the Henley Series I Note Issuing and Purchase Agreement between the Issuer and each initial Henley Series I Noteholder. The Henley Series I Notes will constitute limited recourse obligations of the Issuer and will be secured by the Mortgaged Property. The Henley Series I Notes will be in definitive registered form and will not be assigned any credit rating from a rating agency.

The Henley Series I Notes have the benefit of security over, *inter alia*, the Henley Series I Investment Notes and the Henley Series I Shares and the recourse of Henley Series I Noteholders is limited to the proceeds of such security.

(b) *Henley Series I Investment Notes*

The Henley Series I Investment Notes will be constituted and issued by NP ELM to the Issuer pursuant to the NP ELM Henley Series I Investment Note Issuing and Purchase Agreement. The Henley Series I Investment Notes will constitute unsecured limited recourse obligations of NP ELM. The Henley Series I Investment Notes will have a minimum denomination of EUR 100,000.

### **3.2 Amount of the Henley Series I Notes**

It is anticipated that the Henley Series I Notes will be issued in a Maximum Commitment Amount equal to approximately EUR 181,150,000, as may be increased from time to time upon the issuance of Further Henley Series I Notes.

The Henley Series I Notes will be delayed-draw securities and, subject to the satisfaction of certain conditions, will require Henley Series I Noteholders to provide funding to the Issuer (up to each Henley Series I Noteholder's Commitment Amount) when requested in accordance with the Conditions and the terms of the Henley Series I Note Issuing and Purchase Agreements.

Pursuant to the terms of the Henley Series I Trust Deed, the Issuer will be entitled to issue additional notes from time to time, either to form a single series with the Henley Series I Notes (and such notes may be issued at a premium or a discount), or to constitute an independent series secured on property other than the Mortgaged Property (an **Other Series**).

### **3.3 Distributions**

Distributions on the Henley Series I Notes will be made on each Henley Series I Note Payment Date, with the amount of such distribution being equal to the applicable Henley Series I Distribution Proceeds credited to the Proceeds Account of the Issuer by NP ELM in respect of the Henley Series I Investment Notes.

**NP ELM Henley Series I Available Funds** means any amount received by NP ELM from time to time on the Henley Series I Portfolio, less:

- (a) any taxes (including tax accruals), costs, fees, expenses (including Administrative Expenses) of NP ELM and/or the Issuer and paid by, or to be paid by, NP ELM;
- (b) payments due or that may become due by NP ELM in respect of debt obligations (including pursuant to any Credit Facilities) and Hedging Liabilities;
- (c) cash (including CLO Investment Sale Proceeds) that has been applied towards, or designated for the purposes of, reinvestment, including to ensure that, at any time, over 50 per cent. of the total securitised exposures held by each Retention CLO have been contributed by NP ELM;
- (d) amounts necessary to satisfy any liquidity requirements; and
- (e) the NP ELM Henley Series I Profit Amount,

in each case as determined by NP ELM, following consultation with the Portfolio Adviser, provided however that the amounts described in paragraphs (a) to (e) above shall only be deducted from the NP ELM Henley Series I Available Funds if and to the extent the Portfolio Advisor reasonably determines that such amounts are attributable to Henley Series I and, where it determines such amounts are attributable to Henley Series I and any Other Series, the portion attributable to each Other Series shall not be deducted from the NP ELM Henley Series I Available Funds.

In the event there are NP ELM Henley Series I Available Funds, NP ELM will make an NP ELM Henley Series I Distribution on the Henley Series I Investment Notes to the Issuer on any NP ELM Henley Series I Payment Date.

Each NP ELM Henley Series I Distribution will be calculated in accordance with applicable Irish law as the NP ELM Henley Series I Available Funds. Upon a determination of an NP ELM Henley Series I Distribution, it will be designated and paid by NP ELM to the Issuer as follows:

- (a) an amount equal to the amount which the Issuer will be required to pay on the next Henley Series I Note Payment Date in accordance with paragraph (b) of the Application of Proceeds (if and to the extent such amounts have not been paid by NP ELM on the Issuer's behalf) shall be designated as Expense Proceeds and paid to the Proceeds Account; and
- (b) the remaining portion of such NP ELM Henley Series I Distribution shall be designated as Henley Series I Distribution Proceeds and paid into the Proceeds Account.

### **3.4 Term**

The Henley Series I Notes will not have a fixed maturity date. All outstanding Henley Series I Notes will be redeemed by the Issuer and cancelled as soon as reasonably practicable after the last Collateral Obligation and CLO Investment in the Henley Series I Portfolio has been repaid, redeemed or sold and the final NP ELM Henley Series I Distribution (and consequential distribution on the Henley Series I Notes) has been made.

### **3.5 Early Redemption**

The Henley Series I Notes may be redeemed early upon an early redemption of the Henley Series I Investment Notes.

NP ELM will have the ability to redeem some or all of the Henley Series I Investment Notes if, in the opinion of NP ELM acting reasonably, there are no suitable investment opportunities to satisfy the investment objective of NP ELM.

### **3.6 Governing Law**

The Henley Series I Notes and the Henley Series I Investment Notes will be governed by English law.

## **4. THE HENLEY SERIES I SHARES**

Class E shares in the equity of NP ELM for a total consideration of €1,000,005 (the nominal value of each Henley Series I Share being €1 and €1,000,000 being share premium in respect of all of the class E shares in aggregate) shall be purchased by the Issuer pursuant to a non-participating equity subscription letter. The Henley Series I Shares shall be governed by Irish law.

## **5. TRANSFER OF THE HENLEY SERIES I NOTES**

Transfers of interests in the Henley Series I Notes are subject to certain restrictions and must be made in accordance with the procedures set forth in the Henley Series I Trust Deed and the Conditions. See "*Transfer Restrictions*". Each purchaser of Henley Series I Notes in making its purchase will make certain acknowledgements, representations and agreements (actual or deemed). See "*Transfer Restrictions*". The transfer of Henley Series I Notes in breach of certain of such representations and agreements will result in affected Henley Series I Notes being deemed null and void *ab initio* and/or becoming subject to certain forced transfer provisions. See Conditions 3.2 (*Transfer restrictions*) and 9.4 (*Forced Transfer*).

## RISK FACTORS

*The following is a summary of the principal risks associated with an investment in the Henley Series I Notes. These risk factors are material to an investment in the Henley Series I Notes and in the Issuer. Prospective Henley Series I Noteholders should carefully read and consider all the information contained in this Private Placement Memorandum, including the risk factors set out in this section, prior to making any investment decision.*

*Investment in the Henley Series I Notes should be regarded as long-term in nature and involving a high degree of risk. Accordingly, prospective investors should consider carefully all of the information set out in this Private Placement Memorandum including, in particular, the risks described below which are not presented in any order of priority and which may not be an exhaustive list or explanation of all the risks which investors may face when making an investment in the Henley Series I Notes and which should be used as guidance only.*

*Only those risks which are believed to be material and currently known to the Issuer in relation to itself and its industry as at the date of this Private Placement Memorandum have been disclosed. Additional risks and uncertainties not currently known to the Issuer may also have an adverse effect on the business, results of operations, financial conditions and prospects of the Issuer and the market price of the Henley Series I Notes. Potential investors should review this Private Placement Memorandum carefully and in its entirety and consult with their professional advisers before making an application to invest in the Henley Series I Notes.*

### 1. RISKS RELATING TO THE ISSUER AND THE HENLEY SERIES I NOTES

**Investors have a limited basis on which to evaluate the Issuer's ability to achieve its investment objective.**

The Issuer has no relevant substantial assets other than the Mortgaged Property and is limited in its permitted activities. Accordingly, the Issuer has a limited performance history for a prospective investor to consider in making its decision to invest in the Henley Series I Notes. There is no general intention to accumulate surpluses in the Issuer other than the Issuer Profit Amount (being €1,000 per annum). An investment in the Henley Series I Notes is therefore economically akin to an indirect investment in the Henley Series I Portfolio.

The Issuer will finance the payment of interest and repayment of principal on the Henley Series I Notes from income generated by the Henley Series I Investment Notes. If the net proceeds from a liquidation of the Henley Series I Investment Notes and the Henley Series I Shares are exhausted, then all obligations of the Issuer to the Henley Series I Noteholders under the Henley Series I Notes, each Henley Series I Note Issuing and Purchase Agreement or otherwise in connection with the Henley Series I Notes and the Henley Series I Note Issuing and Purchase Agreement will be deemed to be discharged in full and extinguished, and the Henley Series I Noteholders will have no further claim against the Issuer.

The return on the Henley Series I Notes will depend on many factors, including the performance of the Henley Series I Investment Notes, the price and performance of the investments made by NP ELM designated as forming part of the Henley Series I Portfolio, the availability and liquidity of investment opportunities falling within NP ELM's investment objective and policy, the level and volatility of interest rates, readily accessible short-term borrowings, the conditions in the financial markets and economy, the financial performance of obligors under the Collateral Obligations designated as forming part of the Henley Series I Portfolio and NP ELM's ability successfully to operate its business and execute its investment strategy. There can be no assurance that such investment strategy will be successful. See further "Risk Factors – Risks Relating to NP ELM's Investment Strategy" below.

Investment in the Henley Series I Notes will be a speculative investment of a long-term nature involving a high degree of risk. A Henley Series I Noteholder could lose all or a substantial portion of its investment in the Henley Series I Notes. Henley Series I Noteholders must have the financial ability, sophistication, experience and willingness to bear the risks of an investment in the Henley Series I Notes.

## Prior activities of the Issuer

As at 25 March 2019:

- (a) The Issuer issued an Other Series comprising EUR 94,200,000 Series I Notes (the **Series I Notes**) on 1 February 2016. The Issuer issued a further EUR 3,305,000 Series I Notes on 16 April 2016. The Issuer used the proceeds of the Series I Notes to invest in profit participating notes and class A shares issued by NP ELM designated as forming part of the portfolio in respect of the Series I Notes (the **Series I Portfolio**).
- (b) The Issuer issued an Other Series comprising EUR 114,740,000 Series II Notes (the **Series II Notes**) on 12 May 2017. The Issuer used the proceeds of the Series II Notes to invest in profit participating notes and class B shares issued by NP ELM designated as forming part of the portfolio in respect of the Series II Notes (the **Series II Portfolio**).
- (c) The Issuer issued an Other Series comprising EUR 11,500,000 Series IIb Notes (the **Series IIb Notes**) on 17 July 2017. The Issuer used the proceeds of the Series IIb Notes to invest in profit participating notes and class C shares issued by NP ELM designated as forming part of the portfolio in respect of the Series IIb Notes (the **Series IIb Portfolio**).
- (d) The Issuer issued an Other Series comprising EUR 63,065,000 Series III Notes (the **Series III Notes**) on 25 February 2019. The Issuer used the proceeds of the Series III Notes to invest in profit participating notes and class D shares issued by NP ELM designated as forming part of the portfolio in respect of the Series III Notes (the **Series III Portfolio**).

The only operations that an issuer of structured notes similar to the Henley Series I Notes is ordinarily permitted to perform prior to the issue date thereof is the entry into warehouse arrangements in respect of the acquisition of certain assets on which such notes are to be secured on or prior to such issue date. This is to mitigate the risk that creditors of the issuer may exist as a result of the activities of such issuer who may be able to take action against the issuer should it not perform its obligations to the extent that such creditors have not entered into limited recourse and non-petition provisions similar to those to which the Secured Parties are subject pursuant to the Henley Series I Trust Deed. This risk is potentially increased in the case of the Issuer, as a result of it having issued the Series I Notes, Series II Notes, the Series IIb Notes and the Series III Notes and having entered into related transactions on and since such issuance.

### **The Issuer and NP ELM are reliant on third party service providers and a failure by one or more service providers may materially disrupt the business of NP ELM and the Issuer.**

The Portfolio Adviser is, as part of the services it provides under the terms of the Portfolio Advisory Agreement, responsible for providing NP ELM with the necessary human capital, credit and other service support resources to perform the functions necessary to the business of NP ELM. Therefore, NP ELM is to some extent reliant upon the performance of the Portfolio Adviser and/or its delegates, Affiliates and other third party service providers for the performance of certain functions. In addition, the Issuer and NP ELM each utilise the services of other third party service providers (including in the case of NP ELM, any Sub-Portfolio Advisers instructed by the Portfolio Adviser) for the performance of certain functions.

Failure by any service provider to carry out its obligations to the Issuer or NP ELM in accordance with the applicable duty of care and skill, or at all, or termination of any such appointment may have a material adverse effect on the performance of the Issuer or a material adverse effect on the performance of NP ELM and, by extension, the Issuer's performance and the return on the Henley Series I Notes.

In the event that it is necessary for the Issuer or NP ELM to replace any third party service provider, it may be that the transition process takes time, increases costs and may adversely affect the Issuer's performance and the return on the Henley Series I Notes.

## **Counterparty credit risk**

The Issuer and NP ELM are exposed to credit risk. As well as being exposed to the credit risk in respect of the Aggregate Portfolio, Henley Series I Noteholders will be exposed to a number of other credit risks:

- (a) NP ELM's hedging strategy may involve NP ELM entering into contracts with counterparties. Pursuant to such contracts, the relevant counterparties agree to make payments to NP ELM under certain circumstances as described therein. NP ELM will be exposed to the credit risk of such counterparties with respect of any such payments.
- (b) The Issuer and NP ELM will each be exposed to the credit risk of the Account Bank and the Custodian to the extent of, respectively, all cash held in accounts by the Account Bank on behalf of the Issuer and NP ELM and all securities held by the Custodian on behalf of NP ELM.
- (c) As the Henley Series I Notes are delayed-draw securities, the Issuer will be exposed to the credit risk of Henley Series I Noteholders in respect of their obligation to provide requested funding amounts.

Any losses incurred by either the Issuer or NP ELM in respect of the credit exposures described above would negatively affect distributions paid on the Henley Series I Notes

## **Limited Recourse Obligations**

The Henley Series I Notes represent limited recourse debt obligations of the Issuer. No person other than the Issuer will be obliged to make payments in respect of the Henley Series I Notes. The Henley Series I Noteholders must rely primarily on distributions pursuant to the Henley Series I Investment Notes and the Henley Series I Shares for payments thereon. If payments by NP ELM to the Issuer on the Henley Series I Investment Notes and the Henley Series I Shares are insufficient to make payments on the Henley Series I Notes, no other assets will be available for payment of the deficiency and, following realisation of the Mortgaged Property charged to secure the Henley Series I Notes, none of the Issuer, any Transaction Party or any of their Affiliates nor any other person shall be obliged to pay any deficiency and all outstanding claims shall be extinguished.

In order to ensure the regulatory efficacy of NP ELM as a loss absorbing entity, the Henley Series I Investment Notes are limited in recourse. If the amount by which the net proceeds from payment on, and/or liquidation of, the Henley Series I Portfolio (or, in the case of CLO Investments forming part of the Henley Series I Portfolio, redemption in full of such CLO Investments) available to unsecured creditors of NP ELM are less than the aggregate amount payable by NP ELM to the Issuer (as Investment Noteholder) under the Henley Series I Investment Notes, the amount payable by NP ELM to the Issuer (as Investment Noteholder) under the Henley Series I Investment Notes will be reduced to such amount of the net proceeds from the Henley Series I Portfolio which are available to satisfy such payment obligation under the Henley Series I Investment Notes. In these circumstances, the other assets of NP ELM (including any assets designated as forming part of a portfolio in respect of an Other Series) will not be available for payment of such shortfall, and the Issuer's (as Investment Noteholder) right to receive any further amounts under the Henley Series I Investment Notes shall be extinguished and the Issuer (as Investment Noteholder) may not take any further action to recover such amounts. As the distributions on the Henley Series I Notes are heavily linked to distributions on the Henley Series I Investment Notes, to the extent that any such shortfall occurs, this would adversely affect sums payable to Henley Series I Noteholders in respect of the Henley Series I Notes.

In addition, the Trustee will in general be obliged pursuant to the terms of the Henley Series I Trust Deed in relation to the Henley Series I Notes to apply all amounts received by it in connection with the realisation or enforcement of the security constituted by or pursuant to such Henley Series I Trust Deed in accordance with the Application of Proceeds. In such circumstances the Trustee will apply proceeds received by it to pay any amounts owed to it under the Henley Series I Trust Deed and any amounts owed to the Agents under the Agency Agreement before paying amounts owing to Henley Series I Noteholders under the Henley Series I Notes. There

may be insufficient proceeds left from the realisation or enforcement of the security, following such payments to pay amounts owing to Henley Series I Noteholders in full or at all.

The Henley Series I Investment Notes are limited in recourse to the Henley Series I Portfolio, which is distinct from each portfolio in respect of any Other Series. The Henley Series I Noteholders will not have recourse to any portfolio in respect of any Other Series and the holders of any Other Series will not have recourse to the Henley Series I Portfolio. See further "*Risk Factors – Risks Relating to NP ELM's Investment Strategy – Limited Recourse Obligations; The proceeds available to make payment on the Henley Series I Notes and the Henley Series I Investment Notes are limited to Henley Series I Portfolio*" below.

### **Remedies Upon Event of Default**

If an Event of Default occurs and is continuing, the remedies available to the Henley Series I Noteholders will be limited. The rights of the Henley Series I Noteholders are set out at Condition 13 (*Enforcement*).

### **Certain ERISA Considerations**

Under the Plan Asset Regulation (as defined below) issued by the U.S. Department of Labor, as modified, if certain employee benefit plans or other retirement arrangements subject to the fiduciary responsibility provisions of ERISA or Section 4975 of the Code (as defined below), or entities whose underlying assets are treated as assets of such plans or arrangements (collectively, **Plans**) invest in notes which are treated as equity under that regulation (which could include the Henley Series I Notes), the assets of the Issuer could be considered to be assets of such Plans and certain of the transactions contemplated by the Issuer could be considered "prohibited transactions" under Section 406 of ERISA or Section 4975 of the Code. See the section entitled "*Certain ERISA Considerations*" below.

### **Early Redemption and Forced Transfer Considerations**

The Henley Series I Notes may be redeemed pursuant to an early redemption under Condition 9 (*Redemption*) or following an Event of Default. Furthermore, pursuant to Condition 9.4 (*Forced Transfer*), the Henley Series I Notes are subject to mandatory transfer if, in the determination of the Issuer, it is necessary to so redeem or transfer the Henley Series I Notes in order to maintain any applicable exemption from or exception to the Securities Act and the Investment Company Act, to achieve FATCA Compliance (as defined below) or if the beneficial ownership of Henley Series I Notes by a Henley Series I Noteholder causes a violation of the 25 per cent. limitation set out in the Plan Asset Regulation or the Henley Series I Noteholder is otherwise a Non-Permitted ERISA Noteholder (as defined below). None of the Issuer, the Transaction Parties, any of their respective Affiliates or any other party shall be liable to a Henley Series I Noteholder for any such loss arising from the operation of Condition 9.4 (*Forced Transfer*) described herein.

Other than in respect of the circumstances described above, Henley Series I Noteholders will have no entitlement to have their Henley Series I Notes redeemed or repurchased by the Issuer.

### **Change in Law**

Any enactment, execution, ratification of, or any change in or amendment to, any such law (or in the official interpretation of any such law) that occurs after the date of issue of the Henley Series I Notes may have an adverse effect on the ability of the Issuer and/or the Transaction Parties to perform its respective obligations under the Transaction Documents (so far as they relate to the Henley Series I Notes). This may result in the early termination of the transactions contemplated by such documents and/or the early redemption of the Henley Series I Notes, which may adversely affect sums payable to Henley Series I Noteholders in respect of the Henley Series I Notes.

## **Legality of purchase**

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

## **The Henley Series I Notes have Limited Liquidity**

There is currently no market for the Henley Series I Notes. There can be no assurance that any secondary market for any of the Henley Series I Notes will develop or, if a secondary market does develop, that it will provide the Henley Series I Noteholders with liquidity of investment or that it will continue for the life of such Henley Series I Notes. Consequently, a purchaser must be prepared to hold such Henley Series I Notes for an indefinite period of time. Where a market does exist, to the extent that an investor wants to sell these securities, the price may, or may not, be at a discount from the outstanding principal amount. In addition, no sale, assignment, participation, pledge or transfer of the Henley Series I Notes may be affected if, among other things, it would require any of the Issuer or any of their officers or directors to register under, or otherwise be subject to the provisions of, the Investment Company Act or any other similar legislation or regulatory action. Furthermore, the Henley Series I Notes will not be registered under the Securities Act or any U.S. state securities laws, and the Issuer has no plans, and is under no obligation, to register the Henley Series I Notes under the Securities Act. The Henley Series I Notes are subject to certain transfer restrictions and can be transferred only to certain transferees. See "*Plan of Distribution*" and "*Transfer Restrictions*". Such restrictions on the transfer of the Henley Series I Notes may further limit their liquidity.

## **Modifications of the Transaction Documents and the Henley Series I Notes**

Certain amendments and modifications may be made without the consent of Henley Series I Noteholders by agreement by the Trustee, or in some cases by agreement by two Directors independent of the Napier Park Group (and in respect of which the Trustee shall be obliged to consent to such amendments or modifications). See Condition 14.2 (*Modification*). Such amendment or modification could be adverse to certain Henley Series I Noteholders.

## **2. RISKS RELATING TO NP ELM'S INVESTMENT STRATEGY**

### **Limited Recourse Obligations; The proceeds available to make payment on the Henley Series I Notes and the Henley Series I Investment Notes are limited to Henley Series I Portfolio**

The Henley Series I Investment Notes are limited in recourse. If the amount by which the net proceeds from payment on, and/or liquidation of, the Henley Series I Portfolio (or, in the case of CLO Investments forming part of the Henley Series I Portfolio, redemption in full of such CLO Investments) available to unsecured creditors of NP ELM are less than the aggregate amount payable by NP ELM to the Issuer (as Investment Noteholder) under the Henley Series I Investment Notes, the amount payable by NP ELM to the Issuer (as Investment Noteholder) under the Henley Series I Investment Notes will be reduced to such amount of the net proceeds from the Henley Series I Portfolio which are available to satisfy such payment obligation under the Henley Series I Investment Notes. In these circumstances, the other assets of NP ELM (including any assets designated as forming part of a portfolio in respect of an Other Series) will not be available for payment of such shortfall, and the Issuer's (as Investment Noteholder) right to receive any further amounts under the Henley Series I Investment Notes shall be extinguished and the Issuer (as Investment Noteholder) may not take any further action to recover such amounts.

Notwithstanding the above, there may be circumstances where investors in the Henley Series I Notes and the Issuer may be affected by activities conducted by NP ELM which may not relate to, or may not relate solely to, the Henley Series I Portfolio. In particular, liabilities of NP ELM under leverage, financing and/or hedging

arrangements may not be effected on limited recourse terms and, as a result, such arrangements which may be associated with Other Series may potentially affect the Henley Series I Portfolio. This could have a material adverse effect on the performance and return on the Henley Series I Investment Notes and, by extension, on the performance and return on the Henley Series I Notes.

#### **NP ELM has limited relevant operating history**

As at 25 March 2019:

- (a) NP ELM issued EUR 89,199,995 profit participating notes on 1 February 2016 and EUR 3,305,000 profit participating notes on 16 April 2016 (together, the **Series I Investment Notes**) and used the proceeds to invest in the Series I Portfolio. NP ELM has also issued class A shares and used the proceeds to invest in the Series I Portfolio. The Series I Investment Notes and the class A shares comprise the assets designated as forming the portfolio in respect of the Series I Notes.
- (b) NP ELM issued EUR 109,739,995 profit participating notes on 12 May 2017 (the **Series II Investment Notes**) and used the proceeds to invest in the Series II Portfolio. NP ELM has also issued class B shares and used the proceeds to invest in the Series II Portfolio. The Series II Investment Notes and the class B shares comprise the assets designated as forming the portfolio in respect of the Series II Notes.
- (c) NP ELM issued EUR 10,998,600 profit participating notes on 17 July 2017 (the **Series IIb Investment Notes**) and used the proceeds to invest in the Series IIb Portfolio. NP ELM has also issued class C shares and used the proceeds to invest in the Series IIb Portfolio. The Series IIb Investment Notes and the class C shares comprise the assets designated as forming the portfolio in respect of the Series IIb Notes.
- (d) NP ELM issued EUR 62,064,995 profit participating notes on 25 February 2019 (the **Series III Investment Notes**) and used the proceeds to invest in the Series III Portfolio. NP ELM has also issued class D shares and used the proceeds to invest in the Series III Portfolio. The Series III Investment Notes and the class D shares comprise the assets designated as forming the portfolio in respect of the Series III Notes.

The Issuer (and, through their investment in the Issuer, the investors indirectly) does not have rights to the proceeds of assets of NP ELM in connection with its investment in the Henley Series I Investment Notes other than those designated as forming part of the Henley Series I Portfolio. There is therefore limited relevant information about NP ELM's past operating history. Because of this, potential Henley Series I Noteholders have a limited basis on which to evaluate NP ELM's ability to achieve its investment objective or implement its investment strategy and provide a satisfactory investment return. An investment in the Henley Series I Notes is therefore subject to all the risks and uncertainties associated with a new business, including the risk that NP ELM will not achieve its investment objective and that the value of an investment in the Henley Series I Notes could decline substantially as a consequence. Any failure by NP ELM to do so may adversely affect its business, financial condition, results of operations and/or the market price of the Henley Series I Notes.

#### **Market factors may result in the failure of the investment strategy**

Strategy risk is associated with the failure or deterioration of an investment strategy such that most or all investment managers employing that strategy suffer losses. Strategy-specific losses may result from excessive concentration by multiple market participants in the same investment or general economic or other events that adversely affect particular strategies (for example the disruption of historical pricing relationships). Furthermore, an imbalance of supply and demand favouring borrowers could result in yield compression, higher leverage and less favourable terms to the detriment of all investors in the relevant asset class. The investment strategy employed by NP ELM is speculative and involves substantial risk of loss in the event of a failure or deterioration in the financial markets. As a result, NP ELM's investment strategies may fail, and it may be difficult for NP

ELM to amend its investment strategies quickly or at all should certain market factors appear, which may adversely affect the performance and return on the Henley Series I Notes.

An aspect of NP ELM's investment strategy is investment in Retention CLOs. Market conditions as well as investor sentiment may impact the successfulness of such strategy and may prevent NP ELM from carrying out this strategy entirely. See further "*Potential non-compliance with or changes to the EU Retention Requirements*".

**The investment strategy of NP ELM includes investing predominantly in Collateral Obligations and CLO Investments which are subject to a risk of loss of principal**

The investment strategy of NP ELM consists of investing predominantly in Collateral Obligations and CLO Investments. Such investments may be considered to be subject to a level of risk in the case of deterioration of general economic conditions, which might increase the risk of loss of principal. This could result in losses to NP ELM which could have a material adverse effect on the performance and return on the Henley Series I Notes.

**In the event of a default in relation to an investment, NP ELM will bear a risk of loss of principal and accrued interest**

Performance and investor yield on the Issuer's investments in NP ELM may be affected by the default or perceived credit impairment of investments made by NP ELM and by general or sector specific credit spread widening. Credit risks associated with the investments include (among others): (i) the possibility that earnings of an obligor may be insufficient to meet its debt service obligations; (ii) an obligor's assets declining in value; and (iii) the declining creditworthiness, default and potential for insolvency of an obligor during periods of rising interest rates and economic downturn. An economic downturn and/or rising interest rates could severely disrupt the market for the investments and adversely affect the value of the investments and the ability of the obligors thereof to repay principal and interest. In turn, this may adversely affect the performance of NP ELM and, by extension, the Issuer's performance and valuation and the return on the Henley Series I Notes.

In the event of a default in relation to an investment held by it, NP ELM will bear a risk of loss of principal and accrued interest on that investment. Any such investment may become defaulted for a variety of reasons, including non-payment of principal or interest, as well as breaches of contractual covenants. A defaulted investment may become subject to workout negotiations or may be restructured by, for example, reducing the interest rate, a write-down of the principal, and/or changes to its terms and conditions. Any such process may be extensive and protracted over time, and therefore may result in substantial uncertainty with respect to the ultimate recovery on the defaulted investment. In addition, significant costs might be imposed on NP ELM, further affecting the value of the investment. In the case of secured loans, restructuring can be an expensive and lengthy process which could have a material negative effect on NP ELM's anticipated return on the restructured loan. By way of example, it would not be unusual for any costs of enforcement to be paid out in full before the repayment of interest and principal. The liquidity in such defaulted investments may also be limited and, where a defaulted investment is sold, it is unlikely that the proceeds from such sale will be equal to the amount of unpaid principal and interest owed on that investment. This would adversely affect the value of the Aggregate Portfolio of NP ELM and, by extension, performance and return on the Henley Series I Notes.

NP ELM can purchase CLO securities and the issuers of such CLO securities can invest in investments similar to those described herein. Furthermore CLO securities also have limited liquidity (see further "*CLO securities have limited liquidity*" below).

**The illiquidity of investments may have an adverse impact on their price and NP ELM's ability to trade in them or require significant time for capital gains to materialise**

Credit markets may from time to time become less liquid, leading to valuation losses on the Aggregate Portfolio making it difficult to acquire or dispose of them at prices NP ELM considers to be fair value. Accordingly, this may impair NP ELM's ability to respond to market movements and NP ELM may experience adverse price

movements upon liquidation of such investments. Liquidation of portions of the Aggregate Portfolio under these circumstances could produce realised losses. The size of NP ELM's positions may magnify the effect of a decrease in market liquidity for such instruments. Settlement of transactions may be subject to delay and uncertainty. Such illiquidity may result from various factors, such as the nature of the instrument being traded, or the nature and/or maturity of the market in which it is being traded, the size of the position being traded, or lack of an established market for the relevant securities. Even where there is an established market, the price and/or liquidity of instruments in that market may be materially affected by certain factors.

Investments which are in the form of loans are not as easily purchased or sold as publicly traded securities due to the unique and more customised nature of the debt agreement and the private syndication process. As a result, there may be a significant period between the date that NP ELM makes an investment and the date that any capital gain or loss on such investment is realised. Moreover, the sale of restricted and illiquid securities may result in higher brokerage charges or dealer discounts and other selling expenses than the sale of securities eligible for trading on national securities exchanges or in the over-the-counter markets. Further, NP ELM may not be able readily to dispose of such illiquid investments and, in some cases, may be contractually prohibited from disposing of such investments for a specified period of time, which could materially and adversely affect the performance of NP ELM and, by extension, the performance and return on the Henley Series I Notes. See further the risk factor titled *"NP ELM will be unable to liquidate, sell, hedge or otherwise mitigate its credit risk under or associated with the CLO Retention Investments until such time as the securities of the relevant Retention CLO have been redeemed in full"* below. In respect of CLO securities, see *"CLO securities have limited liquidity"* below.

**The Henley Series I Notes and the Henley Series I Investment Notes may be redeemed early if there are no suitable investment opportunities**

NP ELM may at any time redeem some or all of the Henley Series I Investment Notes if, in the opinion of NP ELM acting reasonably, there are no suitable investment opportunities to satisfy the investment objective of NP ELM. On the occurrence of such a redemption of some or all of the Henley Series I Investment Notes, the Issuer shall redeem some or all of the Henley Series I Notes, up to an amount equal to the value of the redeemed Henley Series I Investment Notes. An early redemption of some or all of the Henley Series I Investment Notes may adversely affect the return on the Henley Series I Notes.

**NP ELM may hold relatively concentrated portfolios**

NP ELM may hold a relatively concentrated Aggregate Portfolio and there is a risk that NP ELM could be subject to significant losses if any obligor, especially one with whom NP ELM had a concentration of investments, were to default or suffer some other material adverse change. The level of defaults in the Aggregate Portfolio and the losses suffered on such defaults may increase in the event of adverse financial or credit market conditions. Any of these factors could adversely affect the value of the Aggregate Portfolio and, by extension, the performance and return on the Henley Series I Notes.

**Material changes affecting global debt and equity capital markets may have a negative effect on NP ELM's business, financial condition, results of operations and/or the market price of the Henley Series I Notes**

The global financial markets have experienced extreme volatility and disruption over the past decade, as evidenced by a lack of liquidity in the equity and debt capital markets, significant write-offs in the financial services sector, the re-pricing of credit risk in the credit market and the failure of major financial institutions. Despite actions of governmental authorities, these events contributed to general economic conditions that have materially and adversely affected the broader financial and credit markets and reduced, and in certain circumstances, significantly reduced, the availability of debt and equity capital.

Further, within the banking sector, the default of any institution could lead to defaults by other institutions. Concerns about, or default by, one institution could lead to significant liquidity problems, losses or defaults by

other institutions, because the commercial soundness of many financial institutions may be closely related as a result of their credit, trading, clearing or other relationships. This risk is sometimes referred to as "systemic risk" and may adversely affect other third parties with whom NP ELM deals. NP ELM may therefore be exposed to systemic risk when NP ELM deals with various third parties whose creditworthiness may be exposed to such systemic risk.

Recurring market deterioration may materially adversely affect the ability of an issuer whose debt obligations form part of the Aggregate Portfolio to service its debts or refinance its outstanding debt. Further, such financial market disruptions may have a negative effect on the valuations of the investments and on the potential for liquidity events involving such investments. In the future, non-performing assets in the Aggregate Portfolio may cause the value of the Aggregate Portfolio to decrease affecting the return on the Henley Series I Investment Notes and accordingly the Henley Series I Notes. Adverse economic conditions may also decrease the value of any security obtained in relation to any of the investments.

Conversely, in the event of sustained market improvement, NP ELM may have access to a reduced number of attractive potential investment opportunities, which also may result in a reduction in the returns to the Issuer and accordingly to the Henley Series I Noteholders.

### **The hedging arrangements of NP ELM may not be successful**

NP ELM's economic risks cannot be effectively hedged. In addition NP ELM will not be permitted to enter into hedging with respect to the CLO Retention Investments other than in compliance with the EU Retention Requirements.

However, in connection with the financing of certain investments, NP ELM may employ hedging techniques designed to reduce the risks of adverse movements in interest rates, prices of Collateral Obligations and/or currency exchange rates. However, some residual risk may remain as a result of imperfections and inconsistencies in the market and/or in the hedging contract. While such hedging transactions may reduce certain risks, they create others.

NP ELM may utilise certain derivative instruments (including, without limitation, single-name credit default swaps, credit default swap and loan credit default swap indexes, equity futures and equity indexes) for hedging purposes. However, even if used primarily for hedging purposes, the prices of derivative instruments are highly volatile, and acquiring or selling such instruments involves certain leveraged risks. There may be an imperfect correlation between the instrument acquired for hedging purposes and the investments or market sectors being hedged, in which case, a speculative element is added to the highly leveraged position acquired through a derivative instrument primarily for hedging purposes. In particular, the investments which are in the form of loans may, in certain circumstances, be repaid at any time on short notice at no cost, and accordingly the hedging of interest rate or currency risk in such circumstances may be less precise than is the case with investments in the public securities market.

Furthermore, default by any hedging counterparty in the performance of its obligations could subject the investments to additional credit and market risks. Accordingly, although NP ELM may benefit from the use of hedging strategies, failure to properly hedge the market risk in the investments and/or default of a counterparty in the performance of its obligations under a hedging contract may have a material adverse effect on the performance of NP ELM and, by extension, the performance and return on the Henley Series I Notes, and such material adverse effects may exceed those which may have resulted had no hedging strategy been employed.

### **Payments under hedging contracts**

NP ELM's ongoing payment obligations under hedging contracts (including termination payments) may also be significant. The payments associated with such hedging arrangements generally rank senior to payments on the Henley Series I Investment Notes. NP ELM will depend upon each hedge counterparty to perform its obligations under any hedging contract. If a hedging counterparty defaults or becomes unable to perform due to insolvency

or otherwise, NP ELM may not receive payments it would otherwise be entitled to from such counterparty to cover the exposure it intended to hedge. The applicable hedging counterparty may also have the right to terminate the relevant hedging contract following the occurrence of certain events relating to the applicable hedging contract, including related to certain regulatory matters. Any such termination in the case of a hedging contract would result in NP ELM being exposed to risk it intended to hedge for so long as it has not entered into a replacement hedging contract, and may result in NP ELM being required to pay a termination amount to the relevant hedging counterparty. Such termination amount may be significant, and would rank senior to payments on the Henley Series I Investment Notes and Henley Series I Shares.

In respect of risks associated with claims under hedging contracts associated with Other Series potentially affecting the Henley Series I Portfolio, see further "*Limited Recourse Obligations; The proceeds available to make payment on the Henley Series I Notes and the Henley Series I Investment Notes are limited to Henley Series I Portfolio*" above.

**Under certain hedging contracts that NP ELM may enter into, NP ELM may be required to grant security over some of its assets to the relevant counterparty as collateral**

In connection with certain hedging contracts, NP ELM may be required to grant security interests over some of its assets to the relevant counterparty to such hedging contract as collateral. Such hedging contracts typically will give the counterparty the right to terminate the agreement upon the occurrence of certain events. Such termination events may include, among others, a failure by NP ELM to pay amounts owed when due, a failure to provide required reports or financial statements, a decline in the value of the investments secured as collateral, a failure to maintain sufficient collateral coverage, a failure by NP ELM to comply with the investment strategy and any investment restrictions, key changes in NP ELM's management, a significant reduction in NP ELM's net asset value, and material violations of the terms, representations, warranties or covenants contained in the hedging contract, as well as other events determined by the counterparty. If a termination event were to occur, there may be a material adverse effect on the performance of NP ELM and, by extension, the performance and return on the Henley Series I Notes.

**Currency risk**

The Henley Series I Noteholders will be exposed to certain currency risks both from the Aggregate Portfolio and the distributions on the Henley Series I Notes. Certain of NP ELM's assets may be invested in securities and other investments which are denominated in other currencies. Accordingly, NP ELM will necessarily be subject to foreign exchange risks and the value of its assets may be affected unfavourably by fluctuations in currency rates. Although NP ELM may utilise financial instruments to hedge against declines in the value of such assets as a result of changes in currency exchange rates, it is not obliged to do so and may terminate any hedge contract at any time. There can also be no assurance that any such hedging will be successful, and to the extent that such hedging is not successful the cash flows and values of investments made by NP ELM may be adversely impacted (see further "*The hedging arrangements of NP ELM may not be successful*"). Moreover, it may not be possible for NP ELM to hedge against a particular change or event at an acceptable price or at all. In addition, there can be no assurance that any attempt to hedge against a particular change or event would be successful, and any such hedging failure could materially and adversely affect the performance of NP ELM and, by extension, the Issuer's performance and valuation and the return on the Henley Series I Notes.

The Issuer will pay distributions on the Henley Series I Notes in Euro. This presents certain risks relating to currency conversions if a Henley Series I Noteholder's financial activities are denominated principally in a currency or currency unit (the **Noteholder's Currency**) other than Euro. These include the risk that exchange rates may significantly change (including changes due to devaluation of Euro or revaluation of the Henley Series I Noteholder's Currency) and the risk that authorities with jurisdiction over the Noteholder's Currency may impose or modify exchange controls. An appreciation in the value of the Noteholder's Currency relative to the Euro would decrease (i) the Noteholder's Currency-equivalent yield on the Henley Series I Notes, (ii) the Noteholder's Currency equivalent value of the principal payable on the Henley Series I Notes and (iii) the Noteholder's Currency equivalent market value of the Henley Series I Notes. Government and monetary

authorities may impose (as some have done in the past) exchange controls that could adversely affect an applicable exchange rate or the ability of the Issuer to make payments in respect of the Henley Series I Notes. As a result, Henley Series I Noteholders may receive less distributions than expected, or no distributions.

**The use of leverage, external financing and hedging by NP ELM may increase the volatility of returns and providers of leverage, financing and hedging would rank ahead of investors in NP ELM in the event of insolvency**

NP ELM may enter into Credit Facilities to purchase Collateral Obligations and/or CLO Investments and hedges to cover currency, credit or interest rate risk. There are no pre-determined limitations on the amount of leverage to be deployed or hedges to be entered into. Providers of such leverage, financing and hedging will rank ahead of the Investment Noteholder in the event of an insolvency.

While leverage presents opportunities for increasing total returns, it can also have the effect of increasing the volatility of the performance of NP ELM and, by extension, the Henley Series I Notes, including the risk of total loss of the amount invested. If income and capital appreciation on investments made with borrowed funds are less than the costs of the leverage, NP ELM's net asset value will decrease. The effect of the use of leverage is to increase the investment exposure, the result of which is that, in a market that moves adversely, the possible resulting loss to Henley Series I Noteholders' capital would be greater than if leverage were not used. As a result of leverage, small changes in the value of the underlying assets may cause a relatively large change in the value of NP ELM. Many financial instruments used to employ leverage are subject to variation or other interim margin requirements, which may force premature liquidation of investments. Henley Series I Noteholders should be aware that the use of leverage by NP ELM can be considered to multiply the leverage effect on their investment returns in the Issuer. As described above, while this effect may be beneficial when markets' movements are favourable, it may result in a substantial loss of capital when markets' movements are unfavourable.

In addition, such leverage may involve granting of security or the outright transfer of specific investments in the Aggregate Portfolio. Leverage does create opportunities for greater total returns on the investments but simultaneously may create special risk considerations by exaggerating changes in the total value of NP ELM's net asset value and in the yield on the investments and, subsequently, the yield on the Henley Series I Investment Notes held by the Issuer.

In addition, to the extent leverage is employed, NP ELM may be required to refinance transactions from time to time. On each refinancing, the applicable counterparty may choose to re-negotiate the terms of each transaction or indeed not to refinance the transaction at all. To the extent refinancing facilities are not available in the market at economic rates or at all, NP ELM may be required to sell assets at disadvantageous prices. Any such deleveraging may result in losses on investments which could be severe and accordingly could have a material adverse effect on the performance of NP ELM and, by extension, the Issuer's performance and valuation and the return on the Henley Series I Notes.

In respect of risks associated with claims under leverage, financing and/or hedging arrangements associated with Other Series potentially affecting the Henley Series I Portfolio, see further "*Limited Recourse Obligations; The proceeds available to make payment on the Henley Series I Notes and the Henley Series I Investment Notes are limited to Henley Series I Portfolio*" above.

**Subordination of Henley Series I Investment Notes and Henley Series I Shares**

The Henley Series I Investment Notes are unsecured obligations of NP ELM and amounts payable on the Henley Series I Investment Notes and the Henley Series I Shares will be made solely from amounts received in respect of the assets of NP ELM available for distribution to its unsecured creditors. NP ELM is permitted to incur secured debt (in the form of one or more Credit Facilities or otherwise) and may enter into one or more hedging contracts. Such secured debt and hedging arrangements will rank ahead of the Henley Series I Investment Notes and Henley Series I Shares in respect of any distributions and payments by NP ELM. In an enforcement scenario under any secured debt or hedging arrangement, the provider(s) of such facilities or hedging arrangements will

have the ability to enforce their security over the assets of NP ELM and to dispose of or liquidate (on their own behalf or through a security trustee or receiver) the assets of NP ELM in a manner which is beyond the control of NP ELM. In such an enforcement scenario, there is no guarantee that there will be sufficient proceeds from the disposal or liquidation of NP ELM assets to make distributions on the Henley Series I Investment Notes and the Henley Series I Shares and this may adversely affect the Issuer's performance and the return on the Henley Series I Notes.

**Interest rate fluctuations could expose NP ELM to additional costs and losses**

The prices of the Collateral Obligations and CLO Investments that may be held by NP ELM tend to be sensitive to interest rate fluctuations and unexpected fluctuations in interest rates could cause the corresponding prices of a position to move in directions which were not initially anticipated. In addition, interest rate increases generally will increase the interest carrying costs of borrowed securities and leveraged investments. Further, NP ELM may invest in both floating and fixed rate securities and interest rate movements will affect those respective securities differently. In particular, when interest rates rise significantly, the value of fixed interest rate securities often fall. Furthermore, to the extent that interest rate assumptions underlie the hedging of a particular position, fluctuations in interest rates could invalidate those underlying assumptions and expose NP ELM to additional costs and losses. Any of the above factors could materially and adversely affect the performance of NP ELM and, by extension, the performance and the valuation and return on the Henley Series I Notes.

**In the event of the insolvency of an obligor in respect of an investment, or of an underlying obligor in respect of an investment, the return on such investment to NP ELM may be adversely impacted by the insolvency regime or insolvency regimes which may apply to that obligor or underlying obligor and any of their respective assets**

In the event of the insolvency of an obligor in respect of a Collateral Obligation (and, in the case of CLO Investments, the obligors of the assets within the relevant CLO's portfolio), NP ELM's (or CLO's, in the case of CLO Investments) recovery of amounts outstanding in insolvency proceedings may be impacted by the insolvency regimes in force in the jurisdiction of incorporation of such obligor or in the jurisdiction in which such obligor mainly conducts its business (if different from the jurisdiction of incorporation), and/or in the jurisdiction in which the assets of such obligor are located. Such insolvency regimes impose rules for the protection of creditors and may adversely affect the ability to recover such amounts as are outstanding from the insolvent obligor under the investment, which may adversely affect the performance of NP ELM (or the CLO, if applicable) and, by extension, the Issuer's performance and valuation and the return on the Henley Series I Notes.

Similarly, the ability of obligors to recover amounts owing to them from insolvent underlying obligors may be adversely impacted by any such insolvency regimes applicable to those underlying obligors, which in turn may adversely affect the abilities of those obligors to make payments due under the investment to NP ELM on a full or timely basis.

In particular, it should be noted that a number of European jurisdictions operate unpredictable insolvency regimes which may cause delays to the recovery of amounts owed by insolvent obligors or underlying obligors subject to those regimes. The different insolvency regimes applicable in the different European jurisdictions result in a corresponding variability of recovery rates for senior secured loans, entered into or issued in such jurisdictions, any of which may have a material adverse effect on the performance of a CLO or NP ELM and, by extension, the Issuer's performance and valuation and the return on the Henley Series I Notes.

**NP ELM or a CLO may be subject to losses on investments as a result of insolvency or clawback legislation and/or fraudulent conveyance findings by courts**

Various laws enacted for the protection of creditors and stakeholders may apply to certain investments that are debt obligations, although the existence and applicability of such laws will vary between jurisdictions. For example, if a court were to find that an obligor did not receive fair consideration or reasonably equivalent value

for incurring indebtedness evidenced by an investment and the grant of any security interest securing such investment, and, after giving effect to such indebtedness, the obligor: (i) was insolvent; (ii) was engaged in a business for which the assets remaining in such obligor constituted unreasonably small capital; or (iii) intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they mature, such court may: (a) invalidate such indebtedness and such security interest as a fraudulent conveyance; (b) subordinate such indebtedness to existing or future creditors of the obligor; or (c) recover amounts previously paid by the obligor (including to NP ELM or a CLO) in satisfaction of such indebtedness or proceeds of such security interest previously applied in satisfaction of such indebtedness. In addition, if an obligor in whose debt NP ELM or a CLO has an investment becomes insolvent, any payment made on such investment may be subject to avoidance, cancellation and/or clawback as a "preference" if made within a certain period of time (which for example under some current laws may be as long as two years) before insolvency.

In general, if payments on an investment are voidable, whether as fraudulent conveyances, extortionate transactions or preferences, such payments may be recaptured either from the initial recipient or from subsequent transferees of such payments. To the extent that any such payments are recaptured from NP ELM or a CLO, there will be an adverse effect on the performance of a CLO or NP ELM and, by extension, the Issuer's performance and valuation and the return on the Henley Series I Notes.

**The due diligence process that NP ELM plans to undertake in evaluating specific investment opportunities may not reveal all facts that may be relevant in connection with such investment opportunities and any corporate mismanagement, fraud or accounting irregularities may materially affect the integrity of the Issuer's due diligence on investment opportunities**

When conducting due diligence and making an assessment regarding an investment, NP ELM will be required to rely on resources available to it, including internal sources of information as well as information provided by existing and potential obligors, any equity sponsor(s), lenders, CLO Managers and other independent sources. The due diligence process may at times be required to rely on limited or incomplete information.

NP ELM will select investments in part on the basis of information and data relating to potential investments filed with various government regulators and publicly available or made directly available to NP ELM by the entities filing such information or third parties. Although NP ELM will evaluate all such information and data and seek independent corroboration when it considers it appropriate and reasonably available, NP ELM will not be in a position to confirm the completeness, genuineness or accuracy of such information and data. NP ELM is dependent upon the integrity of the management of the entities filing such information and of such third parties as well as the financial reporting process in general.

The value of an investment made by NP ELM may be affected by fraud, misrepresentation or omission on the part of an obligor, underlying obligor, any related parties to such obligor or underlying obligor, or by other parties to the investment (or any related collateral and security arrangements). Such fraud, misrepresentation or omission may adversely affect the value of the investment and/or the value of the collateral underlying the investment in question and may adversely affect NP ELM's ability to enforce its contractual rights relating to that investment or the relevant obligor's ability to repay the principal or interest on the investment.

Investment analyses and decisions by NP ELM may be undertaken on an expedited basis in order to make it possible for NP ELM to take advantage of short-lived investment opportunities. In such cases, the available information at the time of an investment decision may be limited, inaccurate and/or incomplete. Furthermore, NP ELM may not have sufficient time to evaluate fully such information even if it is available.

Accordingly, NP ELM cannot guarantee that the due diligence investigation it carries out with respect to any investment opportunity will reveal or highlight all relevant facts that may be necessary or helpful in evaluating such investment opportunity. Any failure by NP ELM to identify relevant facts through the due diligence process may cause it to make inappropriate investment decisions, which may have a material adverse effect on the performance of NP ELM and, by extension, the Issuer's performance and valuation and the return on the Henley Series I Notes.

**The collateral and security arrangements attached to an investment may not have been properly created or perfected, or may be subject to other legal or regulatory restrictions**

The collateral and security arrangements in relation to secured obligations in which NP ELM may invest (and the security arrangements relating to the underlying assets of CLOs) will be subject to such security or collateral having been correctly created and perfected and any applicable legal or regulatory requirements which may restrict the giving of collateral or security by an obligor, such as, for example, thin capitalisation, over-indebtedness, financial assistance and corporate benefit requirements. If the investments do not benefit from the expected collateral or security arrangements, this may adversely affect the value of, or in the event of a default, the recovery of principal or interest from, such investments. Accordingly, any such failure properly to create or perfect collateral and security interests attaching to the investments may adversely affect the performance of the CLO and/or NP ELM and, by extension, the Issuer's performance and valuation and the return on the Henley Series I Notes.

**The investments will be based in part on valuations of collateral which are subject to assumptions and factors that may be incomplete, inherently uncertain or subject to change**

A component of NP ELM's analysis of the desirability of making a given investment relates to the estimated residual or recovery value of such investments in the event of the insolvency of the obligor (and, in the case of CLOs, the obligors of the assets within the relevant CLO's portfolio). This residual or recovery value will be driven primarily by the value of the anticipated future cashflows of the obligor's business and by the value of any underlying assets constituting the collateral for such investment. The anticipated future cashflows of the obligor's business and the value of collateral can, however, be extremely difficult to predict as in certain circumstances market quotations and third party pricing information may not be available. If the recovery value of the collateral associated with the investments in which NP ELM or a CLO invests decreases or is materially worse than expected by NP ELM or a CLO (as applicable), such a decrease or deficiency may affect the value of the investments made by NP ELM or a CLO and, consequently in each case, the performance of the Henley Series I Notes.

**CLOs are volatile and interest and principal payments payable on the CLOs are not fixed**

CLO securities purchased by NP ELM may constitute the most subordinated tranche of a CLO and all payments of principal and interest on such CLOs are fully subordinated. Interest and principal payments are not fixed but are based on residual amounts available to make such payments. As a result, payments on CLOs will be made by the CLO to the extent of available funds, and no payments thereon will be made until amongst other things (a) the payment of certain costs, fees and expenses have been made and (b) interest and principal (respectively) has been paid on more senior notes of the CLO. Non-payment of interest or principal on the more subordinated tranches of CLOs will be unlikely to cause an event of default in relation to the CLO.

CLOs represent a highly leveraged investment in the underlying assets of the CLO. Accordingly, it is expected that changes in the market value of such CLOs will be greater than changes in the market value of the underlying assets of the CLO, which themselves are subject to credit, liquidity, interest rate and other risks. Utilisation of leverage is a speculative investment technique and involves certain risks to investors and will generally magnify the CLO investors' opportunities for gain and risk of loss. In certain scenarios, CLOs may be subject to a partial or a 100 per cent. loss of invested capital. As CLO securities purchased by NP ELM may represent the most subordinated securities in a leveraged capital structure, any deterioration in performance of the asset portfolio of such a CLO, including defaults and losses, a reduction of realised yield or other factors, will be borne first by holders of such CLO securities prior to the rest of the capital structure. Accordingly, there will be an adverse effect on the performance of the CLO and/or NP ELM and, by extension, the performance and return on the Henley Series I Notes.

### **CLOs are a limited recourse obligation**

CLOs are a limited recourse obligation and amounts payable on CLOs are payable solely from amounts received in respect of the collateral of the CLO. Payments on a CLO prior to and following enforcement of the security over the collateral of a CLO are subordinated to the prior payment of certain costs, fees and expenses of, or payable by, the CLO and, if the investment is a subordinated tranche, to payment of principal and interest on more senior notes of the CLO. The holders of CLOs must rely solely on distributions on the collateral of the CLO for payment of principal and interest, if any, on CLO securities. There can be no assurance that the distributions on the collateral of a CLO will be sufficient to make payments on such CLO. If distributions are insufficient to make payments on the CLO, no other assets of the CLO will be available for payment of the deficiency and following realisation of the collateral and the application of the proceeds thereof, the obligations of the CLO to pay such deficiency shall be extinguished. Such shortfall will be borne in the first instance by the most subordinated tranche of any CLO securities.

In addition, at any time whilst CLO securities are outstanding in, no CLO holder shall be entitled at any time to institute against the related CLO, or join in any institution against such CLO of, any bankruptcy, reorganisation, arrangement, insolvency, examinership, winding up or liquidation proceedings under any applicable bankruptcy or similar law in connection with any obligations of the CLO or otherwise owed to the CLO holder, save for lodging a claim in the liquidation of the CLO which is initiated by another party or taking proceedings to obtain a declaration as to the obligations of the CLO, nor shall it have a claim arising in respect of the share capital of the CLO.

### **CLO securities have limited liquidity**

In addition to the restrictions mentioned in the section below titled "*NP ELM will be unable to liquidate, sell, hedge or otherwise mitigate its credit risk under or associated with the CLO Retention Investments until such time as the securities of the relevant CLO have been redeemed in full*" there will usually be a limited market for notes representing CLOs. There is no guarantee that any party to a CLO transaction will make a secondary market in relation to the CLOs. There can be no assurance that a secondary market for any CLO will develop or, if a secondary market does develop, that it will provide the holders of CLO securities with liquidity of investment or that it will continue for the life of such notes. As a result, NP ELM may have to hold such CLO securities for an indefinite period of time or until their early redemption date or maturity date. Where a market does exist, to the extent that an investor wants to sell the CLO securities, the price may, or may not, be at a discount from the outstanding principal amount. There may be additional restrictions on divestment in the terms and conditions of CLOs.

### **The Controlling Stake holding of CLOs may be affected by a situation outside of NP ELM's control**

NP ELM intends to, along with the Napier Funds, hold the Controlling Stake in certain CLO Investments. However, NP ELM has no control over the actions of the Napier Funds and NP ELM and the Napier Funds may hold less than the Controlling Stake in CLO Investments where, for example, certain Napier Funds decide to sell CLO Investments which form part of such Controlling Stake.

By holding less than the Controlling Stake in CLO Investments, NP ELM may lose its ability to exercise certain rights that are available to noteholders of such CLO Investments only where a certain percentage of noteholders vote in favour of exercising such rights, for example the ability to exercise an optional redemption of the CLO.

### **NP ELM will be unable to liquidate, sell, hedge or otherwise mitigate its credit risk under or associated with the CLO Retention Investments until such time as the securities of the relevant Retention CLO have been redeemed in full**

The Retention CLOs are intended to be compliant with the EU Retention Requirements. In connection with this intention, NP ELM will be required to, amongst other things, (a) on the closing date of a CLO, commit to purchase the portion of a Retention CLO required to comply with the EU Retention Requirements and (b)

undertake that, for so long as any securities of the CLO remain outstanding (including the CLO Retention Investments), it will retain its interest in such CLO Retention Investments and will not (except to the extent permitted by the EU Retention Requirements) sell, hedge or otherwise mitigate its credit risk under or associated with such CLO Retention Investments. NP ELM may make certain representations and/or give certain undertakings in favour of Retention CLOs (and/or certain other transaction parties) in respect of its ongoing retention of the CLO Retention Investments and regarding its agreement to sell certain assets to such Retention CLO from time to time.

There are currently transactions in the market which are similar to the Retention CLOs, however if an applicable regulatory authority supervising investors in a Retention CLO were to conclude that NP ELM was not holding the CLO Retention Investments in accordance with the EU Retention Requirements, this may negatively impact upon the investors in such Retention CLO. If such investors decided to take action against NP ELM as a result of any negative impact, this may have an adverse effect on NP ELM's business and financial position and, by extension, may have an adverse effect on the Issuer's financial performance and prospects.

In addition, with the intention of achieving classification as an "originator" and complying with the EU Retention Requirements, NP ELM will: (a) establish the relevant CLO; (b) sell investments to the relevant CLO which it has (i) purchased for its own account initially; or (ii) itself or through related entities, directly or indirectly, been involved in the original agreement which created such obligations; and (c) during each relevant CLO's reinvestment period agreeing to sell investments to the relevant CLO from time to time so as to ensure that over 50 per cent. of the total securitised exposures held by the Retention CLO have come from NP ELM (such percentage calculated including the principal proceeds received by the relevant CLO in respect of any NP ELM sourced assets).

As a result of the above, NP ELM will be unable to liquidate, sell, hedge or otherwise mitigate its credit risk under or associated with the CLO Retention Investments required to be held to comply with the EU Retention Requirements until such time as the securities of the relevant Retention CLO have been redeemed in full (whether at final maturity or early redemption). Consequently, if the Henley Series I Investment Notes were to become due and repayable in connection with an early redemption or were subject to partial-redemption, NP ELM will not be obliged under the conditions and the NP ELM Henley Series I Investment Note Issuing and Purchase Agreement to immediately sell, transfer or liquidate the CLO Retention Investments and the proceeds of such CLO Retention Investments (if any) will not be available until the final maturity or early redemption in full of the securities of the relevant CLO. In addition, cash held by NP ELM will not be able to be used to repay the Henley Series I Investment Notes to the extent that such repayment could leave NP ELM unable to continue to originate and sell assets to the Retention CLOs in order to ensure during the relevant Retention CLO's reinvestment period it has provided over 50 per cent. of the total securitised exposures of such Retention CLO (such percentage calculated including the principal proceeds received by the relevant Retention CLO in respect of any NP ELM sourced assets).

NP ELM (or, in the case of CLO Investments that are not CLO Retention Investments, NP ELM together with the Napier Funds) will hold at least a Controlling Stake in the CLO Investments. Accordingly, upon exercise by NP ELM (and the Napier Funds, as applicable), an early redemption option will result in a full redemption of the applicable CLO Investments. NP ELM (or the Napier Funds, as applicable) will generally not be able to exercise any early redemption options until two years from the closing date of the CLO. In the case of Retention CLOs, as a result of the EU Retention Requirements, the CLO Retention Investments will not be permitted to be sold, transferred or liquidated during this time. In relation to each CLO Investment, even after an early redemption option is permitted to be exercised, such an option usually contains a number of conditions to its exercise including, but not limited to, a threshold that the liquidation value of the CLO collateral exceeds an amount which would pay (a) all expenses of the CLO and (b) principal and accrued interest on the CLO notes senior to the CLO Investments. If the liquidation value of the Aggregate Portfolio will not achieve this threshold at the time NP ELM intends to exercise its early redemption option, the CLO will not be able to be optionally redeemed by NP ELM at such time. In such circumstances the CLO Retention Investments may not redeem until their final stated maturity (which may be in excess of 20 years), therefore producing no proceeds to repay the

Henley Series I Investment Notes until this point. See further the risk factor titled "*The Henley Series I Notes have Limited Liquidity*".

### **Potential non-compliance with or changes to the EU Retention Requirements**

The purchase and retention of the CLO Retention Investments will be undertaken by NP ELM with the intention of achieving compliance with the EU Retention Requirements by the relevant Retention CLO. In this regard, it should be noted that on 22 December 2014 the European Banking Authority (the **EBA**) published a paper (the **EBA Paper**), providing advice to the European Commission on the application and effectiveness of the EU Retention Requirements in the light of international market developments. The EBA recommended that the definition of "originator" should be narrowed in order to avoid potential abuses.

In response, legislative proposals seek to implement the EBA's recommendation. The European authorities have adopted and finalised two new regulations related to securitisation (being Regulation (EU) 2017/2402 (the **STS Securitisation Regulation**) and Regulation (EU) 2017/2401) which will apply in general from 1 January 2019. The STS Securitisation Regulation provides for, amongst other things, the harmonisation and replacement of the current risk retention and due diligence requirements (including the corresponding guidance provided through technical standards) applicable to certain EU regulated investors. The replacement provisions in the STS Securitisation Regulation include a restriction, set out in article 6(1), intended to put into effect the recommendation made by the EBA in the EBA Paper with respect to the originator definition referred to above. This restricts an entity from being an "originator" (as defined in the legislative proposals) for risk retention purposes if it has been established or operates "for the sole purpose of securitising exposures". The explanatory memorandum published in conjunction with the original legislative proposals indicates that the provision relating to originators is intended to restrict retention by an entity if it has been established as a dedicated shelf for the sole purpose of securitising exposures and lacks a broad business purpose, providing the example of an entity which does not have the capacity to meet a payment obligation from resources not related to the exposures being securitised.

Furthermore, the replacement provisions provide for a move towards imposing a direct legal obligation on relevant entities to retain the required interest, which is expected to result in one of the originator (such as NP ELM) or the sponsor (such as a collateral manager) being directly responsible for retention compliance in respect of CLOs involving the issuance of securities on or after the application date.

Without limitation to the foregoing, no assurance can be given that the EU Retention Requirements, or the interpretation or application thereof, will not change (whether as a result of the legislative proposals put forward by the European Commission or otherwise). There can be no assurances as to whether the compliance position of any Retention CLO will be affected, if at all, by any change which may be adopted in any final law or regulation (including any regulatory technical standards) relating to the EU Retention Requirements. If such compliance position of Retention CLOs were to be negatively affected with any of the above, this may have a negative impact on the effective execution of NP ELM's business strategy, in particular its investment in Retention CLOs, and, consequentially, may negatively impact return on the Henley Series I Notes.

### **NP ELM may not be able to comply with the U.S. Risk Retention Regulations**

The credit risk retention requirements of section 15G of the U.S. Securities Exchange Act of 1934, as amended (the **Exchange Act**) as added by the Dodd-Frank Act (**US Risk Retention Regulations**) became effective in December 2016. The U.S. Risk Retention Regulations generally require securitisers of asset-backed securities to retain not less than five per cent. of the credit risk of the assets collateralising such asset-backed securities unless an exemption applies.

As further discussed in the adopting release with respect to the U.S. Risk Retention Regulations, the entity acting as the collateral manager of a CLO was initially considered the "securitizer" or "sponsor" of such CLO. However, on February 9, 2018, a three-judge panel (the **Panel**) of the United States Court of Appeals for the District of Columbia held, in *The Loan Syndications and Trading Association v. Securities and Exchange*

Commission and Board of Governors of the Federal Reserve System, No. 1:16-cv-0065 ( the **LSTA Decision**), that collateral managers of “open market CLOs” (described in the LSTA Decision as CLOs where assets are acquired from “arms-length negotiations and trading on an open market”) are not “securitizers” or “sponsors” under Section 941 of the Dodd-Frank Act and, therefore, are not subject to risk retention and do not have to comply with the Risk Retention Regulations. Accordingly, NP ELM does not expect to be required to comply with the U.S. Risk Retention Regulations with respect to “open-market CLOs” that it establishes in reliance on the LSTA Decision.

In the event that the U.S. Risk Retention Regulations become applicable to the CLOs established by NP ELM in the future (whether as a result of regulatory action or governmental action), or if it is subsequently determined that the CLOs established by NP ELM do not constitute “open-market CLOs”, NP ELM may be required to acquire additional securities issued by the Retention CLOs (either in the secondary market or through an additional issuance of securities). Additionally, in the event that the U.S. Risk Retention Regulations become applicable to the CLOs established by NP ELM in the future, the ability of such CLOs to effect any additional issuance of notes or any material amendment may be impaired or limited. If NP ELM fails to so comply (or is unable to comply) with the U.S. Risk Retention Regulations, such failure (or inability) may (i) result in significant negative reputational consequences for NP ELM, (ii) materially and adversely affect the ability of NP ELM to perform its obligations under the relevant transaction documents of such Retention CLOs, and/or (iii) have a material adverse effect on the business of NP ELM (including the ability of NP ELM to generate returns) and consequently the Issuer and/or the market value and liquidity of the Henley Series I Notes. In addition, if NP ELM is unable to establish Retention CLOs that comply with the U.S. Risk Retention Regulations, the ability of the Retention CLO to effect any refinancing or additional issuance of notes may be impaired or otherwise limited, which could also materially and adversely affect NP ELM’s ability to generate returns.

No assurance can be made whether or not any governmental authority will continue to take further legislative or regulatory action in response to past or future economic crises, or otherwise, including by adopting new credit risk retention rules for “open market CLOs,” and the effect (and extent) of such actions, if any, cannot be known or predicted.

The statements contained herein regarding the U.S. Risk Retention Regulations and the LSTA Decision are based on publicly available information solely as of the date of this Private Placement Memorandum. To the extent the U.S. Risk Retention Regulations apply after the date hereof, the ultimate interpretation as to whether any action taken by an entity complies with the U.S. Risk Retention Regulations will be a matter of interpretation by the applicable governmental authorities or regulators.

**The US Risk Retention Regulations may be applicable not just to the Retention CLOs but also to NP ELM and the Issuer**

The US Risk Retention Regulations may be applicable not just to the Retention CLOs but also to NP ELM and the Issuer. Market practice and regulatory interpretations on the U.S. Risk Retention Regulations are still evolving and limited guidance is available. While NP ELM and the Issuer believe that neither the Henley Series I Notes, Henley Series I Investment Notes or Henley Series I Shares should satisfy the definition of “asset-backed security” under the Exchange Act and therefore neither the issuance of the Henley Series I Notes by the Issuer nor the issuance of the Henley Series I Investment Notes or the Henley Series I Shares by NP ELM would be subject to the U.S. Risk Retention Regulations, there is a risk that market practice or regulatory interpretations may change in structures similar to the one contemplated in this Private Placement Memorandum. If a regulator contends that the issuance of the Henley Series I Notes, the Henley Series I Investment Notes or the Henley Series I Shares are subject to U.S. Risk Retention Regulations but the related sponsor fails to retain credit risk in accordance the U.S. Risk Retention Regulations, the related sponsor may be subject to regulatory enforcement or other legal action, which could adversely affect the ability of such sponsor to perform its obligations under the relevant Transaction Documents and thus the value and liquidity of the Henley Series I Notes may be adversely impacted.

### **Liability for breach of a risk retention letter**

The arranger and certain other parties of a Retention CLO in which NP ELM agrees to hold the CLO Retention Investments will require NP ELM to execute a risk retention letter. Under a risk retention letter NP ELM will typically be required to, amongst other things, make certain representations, warranties and undertakings: (a) in relation to its acquisition and retention of the CLO Retention Investments for the life of the Retention CLO; and (b) regarding its agreement to sell Collateral Obligations to the relevant Retention CLO from time to time. If NP ELM sells or is forced to sell the CLO Retention Investments prior to the maturity of the relevant Retention CLO, or NP ELM holds insufficient cash or investments to continually sell the assets to the Retention CLO as described above or for any other reason NP ELM is not considered to be an "originator" for the purposes of the EU Retention Requirements, NP ELM may be in breach of the terms of the related risk retention letter. In such circumstances the arranger of the relevant Retention CLO and the other parties to the related risk retention letter would have recourse to NP ELM for losses incurred as a result of such breach. Such claims may reduce, or entirely diminish any cash or assets of NP ELM which may have been available to pay principal or interest on the Henley Series I Investment Notes.

### **Reports will not be audited**

The Reports made available to Henley Series I Noteholders will be compiled by the Collateral Administrator, on behalf of NP ELM, in consultation with and based on certain information provided to it by NP ELM and the Portfolio Adviser. Information in the reports will not be audited nor will reports include a review or opinion provided by a public accounting firm.

## **3. RISKS RELATING TO THE PORTFOLIO ADVISER**

### **The performance of the Issuer and NP ELM has some dependence on the skills and the personnel of the Portfolio Adviser and the resources it provides to NP ELM in its capacity as the portfolio adviser**

In accordance with the Portfolio Advisory Agreement, the Portfolio Adviser (and any Sub-Portfolio Adviser) is responsible for providing certain advice and assistance to NP ELM. The Portfolio Adviser is also responsible for providing the necessary human capital to NP ELM so that the business and management functions of NP ELM can be carried on. NP ELM, acting on the advice of the human capital provided to NP ELM by the Portfolio Adviser, has responsibility for managing its business affairs in accordance with applicable laws and its constitutional documents and the NP ELM Board has overall responsibility for the activities of NP ELM. The NP ELM Board has responsibility for and oversight of NP ELM's business and such business is managed by the NP ELM Board. The Board has also established the Investment Committee in order to consider and approve investment and hedging proposals from NP ELM's Portfolio Management Team (as set out at the section entitled "*Description of NP ELM – Corporate Governance and Management – Portfolio Management Team*").

Notwithstanding the NP ELM Board and the Investment Committee, NP ELM's day-to-day performance is also reliant on advice and human capital received from the Portfolio Adviser. As a result, if the Portfolio Adviser were no longer able to provide such advice or human capital under the Portfolio Advisory Agreement or failed to provide the advice in the manner required by NP ELM to manage its investments and business, this could have a material adverse effect on the performance of NP ELM and, by extension, the Issuer's performance and valuation and the return on the Henley Series I Notes.

Further, the future ability of NP ELM to pursue its investment strategy successfully may depend on the Portfolio Adviser's ability to retain its existing staff and/or to recruit individuals of similar experience and calibre. In the event of a departure of a key employee of the Portfolio Adviser and its Affiliates, there is no guarantee that the Portfolio Adviser would be able to recruit a suitable replacement or that any delay in doing so would not adversely affect the performance of NP ELM. Events impacting but not entirely within the Portfolio Adviser's control, such as its financial performance, its being acquired or making acquisitions or changes to its internal policies and structures could in turn affect its ability to retain key personnel. If key personnel were to depart or the Portfolio Adviser was unable to recruit individuals with similar experience and calibre, the Portfolio Adviser

may not be able to provide services to the requisite level expected or required by NP ELM. This could have a material adverse effect on the performance of NP ELM and, by extension, the Issuer's performance and valuation and the return on the Henley Series I Notes.

Under the Portfolio Advisory Agreement, NP ELM (except in certain limited circumstances) has no recourse to the Portfolio Adviser and such liabilities would be for the account of NP ELM. This could have a material adverse effect on the performance of NP ELM and, by extension, the Issuer's performance and valuation and the return on the Henley Series I Notes. Additionally under the Portfolio Advisory Agreement, NP ELM is required to indemnify the Portfolio Adviser and its associates and agents, directors, direct and indirect shareholders, members, partners or employees or their respective successors or assignees from and against all liabilities incurred in connection with the Portfolio Advisory Agreement (except to the extent such damage or loss is directly attributable to the Gross Negligence, wilful default or fraud of such person). As a result, if such liabilities arise, NP ELM will be required to make payment under the Portfolio Adviser's indemnity, which could have a material adverse effect on the performance of NP ELM and, by extension, the Issuer's performance and valuation and the return on the Henley Series I Notes. Further details in respect of the Portfolio Advisory Agreement are set out in the section titled "*Summary of the Material Documents*".

The Portfolio Adviser is entitled to resign its role under the Portfolio Advisory Agreement upon 90 days' written notice to NP ELM. If a successor cannot be found for this role, NP ELM may not have the resources it considers necessary to manage its portfolio or to make investments appropriately and, as a result, there may be a material adverse effect on the performance of NP ELM and, by extension, the Issuer's performance and valuation and the return on the Henley Series I Notes. In addition, the Portfolio Adviser may immediately resign by providing written notice to NP ELM upon the occurrence of certain events. If any of these events were to occur and resulted in the resignation of the Portfolio Adviser, NP ELM may not have the expertise available to it in order to manage its assets and may experience difficulty in locating an alternative portfolio adviser and, as a result, there may be a material adverse effect on the performance of NP ELM and, by extension, the Issuer's performance and valuation and the return on the Henley Series I Notes.

#### **The occurrence of a Key Person Event may reduce the Commitment Amount of certain Henley Series I Noteholders**

Upon the occurrence of a Key Person Event, Henley Series I Noteholders who have not yet fully funded their Commitment Amounts may elect to reduce such Commitment Amount to the amount then currently funded by such Henley Series I Noteholder. Any such Henley Series I Noteholder will be negatively affected by such a reduction where other Henley Series I Noteholders continue to invest up to their full Commitment Amount, thereby increasing such other Henley Series I Noteholders' proportionate share of the Aggregate Funding Amount, which will in turn result in increased distributions on the Henley Series I Notes for such other Henley Series I Noteholders. Conversely, the remaining Henley Series I Noteholders that do not elect to reduce their Commitment Amounts will have an increased proportionate risk to NP ELM as their continued investment up to their full Commitment Amounts will not be matched by the Henley Series I Noteholders that do elect to reduce their Commitment Amounts.

## **4. RISKS RELATING TO LAW, REGULATION AND TAXATION**

### **Regulatory Initiatives**

In Europe, the U.S. and elsewhere there is increased political and regulatory scrutiny of banks, the financial industry and the asset-backed securities industry. This has resulted in a significant number of measures for increased regulation which are currently at various stages of implementation. Henley Series I Noteholders are responsible for analysing their own regulatory position.

Prospective investors should therefore make themselves aware of the changes and requirements (and any corresponding implementing rules of their regulator), where applicable to them, in addition to any other applicable regulatory requirements with respect to their investment in the Henley Series I Notes. Any changes to

the regulation for some or all investors may negatively impact the regulatory position of individual investors and, in addition, have a negative impact on the price and liquidity of the Henley Series I Notes in the secondary market.

Changes in law or regulations, or a failure to comply with any laws or regulations, may adversely affect the respective businesses, investments and performance of NP ELM and, consequently, the performance of the Henley Series I Notes (see in particular "*Potential non-compliance with or changes to the EU Retention Requirements*").

The laws and regulations affecting the Issuer are evolving and any changes in such laws and regulations may have an adverse effect on the ability of the Issuer and/or NP ELM to carry on its business. Any such changes may also have an adverse effect on the ability of the Issuer and/or NP ELM to pursue its investment strategy and/or the market price of the Henley Series I Notes.

### **U.S. Dodd-Frank Act**

The Dodd-Frank Act was signed into law on 21 July 2010. The Dodd-Frank Act represents a comprehensive change to financial regulation in the United States, and affects virtually every area of the capital markets. Implementation of the Dodd-Frank Act requires many lengthy rulemaking processes that have resulted in, and will continue to result in the adoption of a multitude of new regulations potentially applicable to entities which transact business in the U.S. or with U.S. persons outside the U.S. Once fully implemented, the Dodd-Frank Act will affect many aspects, in the U.S. and internationally, of the business of collateral managers of CLOs, including securitisation, proprietary trading, investing, creation and management of investment funds, OTC derivatives and other activities. While certain regulations implementing various provisions of the Dodd-Frank Act have been finalised and adopted, many implementing regulations currently exist only in draft form and are subject to comment and revision, and still other implementing regulations have not yet been proposed. It is therefore difficult to predict the full extent to which the business of NP ELM, will be affected by the Dodd-Frank Act as implementing regulations are finalised over time and come into effect.

This uncertainty is further compounded by the numerous regulatory efforts underway outside the U.S. Certain of these efforts overlap with the substantive provisions of the Dodd-Frank Act, while others, such as proposals for financial transaction and/or bank taxes in particular countries or regions, do not. In addition, even where these U.S. and international regulatory efforts overlap, these efforts generally have not been undertaken on a coordinated basis. Areas where divergence between U.S. regulators and their international counterparts exist or have begun to develop (whether with respect to scope, interpretation, timing, approach or otherwise) include trading, clearing and reporting requirements for derivatives transactions, higher U.S. capital and margin requirements relating to uncleared derivatives transactions, and capital and liquidity requirements that may result in mandatory "ring-fencing" of capital or liquidity in certain jurisdictions, among others.

Investors should be aware that those risks are material and that the Issuer and/or NP ELM and, consequently, an investment in the Henley Series I Notes could be materially and adversely affected thereby. As such, investors should consult their own independent advisers and make their own assessment about the potential risks posed by the Dodd-Frank Act and the rules to be promulgated thereunder in making any investment decision in respect of the Henley Series I Notes.

### **The Volcker Rule**

Under Section 619 of the U.S. Dodd-Frank Act and the corresponding implementing rules (the **Volcker Rule**) relevant banking entities (which would include certain non-U.S. affiliates of U.S. banking entities) are generally prohibited from, among other things, (i) conducting proprietary trading activities in a wide variety of financial instruments unless the transaction is excluded from the scope of the rule and (ii) acquiring or retaining any ownership interest in, or acting as sponsor in respect of, certain investment entities referred to as covered funds. In addition, in certain circumstances, the Volcker Rule restricts relevant banking entities from entering into certain credit exposure related transactions with covered funds.

Key terms are widely defined under the Volcker Rule, including "banking entity", "ownership interest", "sponsor" and "covered fund". In particular, "banking entity" is defined to include certain non-U.S. affiliates of U.S. banking entities, as well as non-U.S. banking entities that conduct operations in the United States either directly or through branches or affiliates, and "covered fund" is defined to include an issuer that would be an investment company, as defined in the Investment Company Act but for section 3(c)(1) or 3(c)(7), which would extend to the Issuer given its intention to rely on section 3(c)(7) and "ownership interest" is defined to include, among other things, interests arising through a holder's exposure to profits and losses in the covered fund or through any right of the holder to participate in the selection of an investment manager or advisor or the board of directors of such covered fund.

The Issuer and NP ELM will fall within the definition of "covered fund" under the Volcker Rule unless they fall within a specific exclusion from this definition. None of the Issuer, NP ELM or the Portfolio Adviser makes any representation regarding whether the Issuer will fall within any such exclusion.

The Volcker Rule and any similar measures introduced in another relevant jurisdiction may restrict the ability of relevant individual prospective purchasers to invest in the Henley Series I Notes and, in addition, may have a negative impact on the price and liquidity of the Henley Series I Notes in the secondary market. There is limited interpretive guidance regarding the Volcker Rule, and implementation of the regulatory framework for the Volcker Rule is still evolving. The Volcker Rule's prohibitions and lack of interpretive guidance could negatively impact the liquidity and value of the Henley Series I Notes. Any entity that is a "banking entity" as defined under the Volcker Rule and is considering an investment in the Henley Series I Notes should consider the potential impact of the Volcker Rule in respect of such investment and on its portfolio generally. Each purchaser must determine for itself whether it is a banking entity subject to regulation under the Volcker Rule. None of the Issuer, NP ELM or the Portfolio Adviser makes any representation regarding (i) the status of the Issuer under the Volcker Rule or (ii) the ability of any purchaser to acquire or hold the Henley Series I Notes, now or at any time in the future. Any prospective investor in the Henley Series I Notes, including a U.S. or foreign bank or a subsidiary or other affiliate thereof, should consult its own legal advisers regarding such matters and other effects of the Volcker Rule.

### **CFTC Regulations**

Pursuant to the Dodd-Frank Act, the Commodity Futures Trading Commission (**CFTC**) and the prudential regulators have each promulgated a range of recent regulatory requirements that may affect the pricing, terms and compliance costs associated with the entry into of any hedge transaction by the Issuer and the availability of such hedge transactions. Some or all of the hedge transactions that NP ELM may enter into may be affected by (i) the requirement that certain swaps be centrally cleared and in some cases traded on a designated contract market or swap execution facility, (ii) initial and variation margin requirements of any central clearing organisation (with respect to cleared swaps) or initial or variation requirements as may otherwise be required with respect to uncleared swaps, (iii) recordkeeping obligations, and other matters. These requirements may significantly increase the cost to NP ELM of entering into hedge transactions such that NP ELM may be unable to purchase certain types of Collateral Obligations, have unforeseen legal consequences on NP ELM or have other material adverse effects on NP ELM, the Issuer or the Henley Series I Noteholders.

### **Commodity Pool Regulation**

In 2012, the CFTC rescinded one of the primary rules which formerly provided an exemption from registration as a "Commodity Pool Operator" (a **CPO**) and a "commodity trading advisor" (**CTA**) under the U.S. Commodity Exchange Act, as amended (the **CEA**), in respect of certain transactions. In addition, the Dodd-Frank Act expanded the definition of a "commodity pool" to include any form of enterprise operated for the purpose of trading in commodity interests, including swaps. Similarly, the term "commodity pool operator" was expanded to include any person engaged in a business that is of the nature of a commodity pool or similar enterprise and in connection therewith, solicits, accepts, or receives from others, funds, securities or property for the purpose of trading in commodity interests, including any swaps. The CFTC has taken an extremely expansive interpretation of these definitions, and has expressed the view that entering into a single swap

(apparently without distinguishing between trading and holding a swap position) could make an entity a "commodity pool" subject to regulation under the CEA. It should also be noted that the definition of "swaps" under the Dodd-Frank Act is itself extremely broad, and expressly includes interest rate swaps, currency swaps and total return swaps. No assurance can be made that the United States federal government or any U.S. regulatory body (or other authority or regulatory body) will not continue to take further legislative or regulatory action, and the effect of such actions, if any, cannot be known or predicted.

If NP ELM were deemed to be a "commodity pool", then both the CPO and the CTA of NP ELM would be required to register as such with the CFTC and the National Futures Association (the **NFA**) by the initial offering date of the Henley Series I Notes. Because there has previously been an exemption from such registration for most securitisation and investment fund transactions, there is little, if any, guidance as to which entity or entities would be regarded as NP ELM's CPO and CTA and thus be required to register. While there remain certain limited exemptions from registration, because the wording of these regulations applies to traditional commodity pools and was not drafted with transactions such as NP ELM and its investment activities in mind, it is unclear whether and to what extent any of these exemptions would be available to avoid registration with respect to NP ELM. In addition, if NP ELM were deemed to be a "commodity pool", it would have to comply with a number of reporting requirements that are geared to traded commodity pools, which may result in significant additional costs and expenses, which may in turn affect the amounts payable to Henley Series I Noteholders. It is presently unclear how an investment vehicle such as NP ELM could comply with certain of these reporting requirements on an ongoing basis.

Furthermore, even if an exemption were available, the limits imposed by such exemption may prevent NP ELM from entering into hedge transactions or forcing the termination of a hedge transaction, which would expose NP ELM to costs and increased interest rate or currency exchange rate risk until the hedged assets can be sold.

#### **AIFMD**

The European Union Directive 2011/61/EU on Alternative Investment Fund Managers (**AIFMD**) regulates alternative investment fund managers (**AIFMs**) and provides in effect that each alternative investment fund (an **AIF**) within the scope of the AIFMD must have a designated AIFM responsible for ensuring compliance with the AIFMD.

Based on guidance issued by the Central Bank in November 2013, each of the Issuer and NP ELM considers that it does not constitute an AIF.

However, if the Issuer or NP ELM were to constitute an AIF (because (i) it does not satisfy the conditions set down by the Central Bank, (ii) there is a change in the guidance from the Central Bank or the European Securities and Markets Association or (iii) a different interpretation is applied by another national regulator or the European Securities and Markets Association), then it would be necessary for the Issuer or NP ELM, as applicable, to appoint an AIFM which would be subject to AIFMD and would need to be appropriately regulated. The AIFM would be subject to certain duties and responsibilities in respect of the management of the Issuer's or NP ELM's (as applicable) investments, which could result in significant additional costs and expenses being incurred which may be reimbursable by the Issuer or NP ELM, as applicable, and which may materially adversely affect the Issuer's ability to carry on its business.

#### **EMIR**

The European Market Infrastructure Regulation EU 648/2012 (**EMIR**) and the regulations made under it impose certain obligations on parties to OTC derivative contracts according to whether they are "financial counterparties", such as European investment firms, alternative investment funds (in respect of which, see "AIFMD" above), credit institutions and insurance companies, or other entities which are "non-financial counterparties" or third country entities equivalent to "financial counterparties" or "non-financial counterparties".

Financial counterparties (as defined in EMIR) will, depending on the identity of their counterparty, be subject to a general obligation (the **clearing obligation**) to clear all "eligible" OTC derivative contracts through a duly authorised or recognised central counterparty. They must also report the details of all derivative contracts to a trade repository (the **reporting obligation**) and in general undertake certain risk-mitigation techniques in respect of OTC derivative contracts which are not cleared by a central counterparty, including complying with certain risk mitigation requirements related to timely confirmation of terms, portfolio reconciliation, dispute resolution, daily valuation and the exchange of margin (the **margin obligation** and, together with the other risk mitigation, the **risk mitigation obligations**).

Non-financial counterparties (as defined in EMIR) are subject to the reporting obligation and certain of the risk mitigation obligations. However, they are not subject to the clearing obligation or the margin obligation unless the gross notional value of all derivative contracts entered into by the non-financial counterparty and other non-financial entities in its "group", excluding eligible hedging transactions, exceed certain thresholds and its counterparty is also subject to the clearing obligation or the margin obligation, as applicable. If NP ELM is considered to be a member of such a "group" (as defined in EMIR) (which may, for example, potentially be the case if NP ELM is consolidated by a Henley Series I Noteholder as a result of such Henley Series I Noteholder's holding of a significant proportion of the Henley Series I Notes and through the Henley Series I Notes, the Henley Series I Investment Notes) and if the aggregate notional value of OTC derivative contracts entered into by the Issuer and any non-financial entities within such group exceeds one of the applicable thresholds, the Issuer would be subject to the clearing obligation or if the relevant contract is not a type required to be cleared, to the risk mitigation obligations, including the margin obligation.

The clearing obligation, the reporting requirement, the risk mitigation obligations and the margin posting requirement have been implemented. Whilst the Hedging Liabilities are expected to be treated as hedging transactions and deducted from the total in assessing whether the notional value of OTC derivative contracts entered by NP ELM and/or non-financial entities within its "group" (as defined in EMIR), there is currently no certainty as to whether the relevant regulators will share this view.

If NP ELM becomes subject to the clearing obligation or the margin obligation, it is unlikely that it would be able to comply with such requirements, which would adversely affect NP ELM's ability to enter into Hedging Liabilities or significantly increase the cost thereof, negatively affecting NP ELM's ability to acquire certain Collateral Obligations or CLO Investments and/or hedge its interest rate risk. In addition, prospective investors should be aware that the regulatory changes arising from EMIR may in due course significantly increase the cost of entering into derivative contracts (including the potential for non-financial counterparties such as NP ELM to become subject to marking to market and collateral posting requirements in respect of non-cleared OTC derivatives). As a result of such increased costs, additional regulatory requirements and limitations on the ability of NP ELM to hedge interest rate and currency risk, the amounts payable to Investment Noteholders (and consequentially, the Henley Series I Noteholders) may be negatively affected.

Hedge agreements entered into by NP ELM may contain early termination events which are based on the application of EMIR and which may allow the relevant hedge counterparty to terminate a hedge agreement upon the occurrence of such an event. The termination of such hedge agreement in these circumstances may result in a termination payment being payable by NP ELM.

It should also be noted that certain amendments to EMIR are contemplated. In particular, while the STS Securitisation Regulation contemplates that OTC derivative contracts entered into by securitisation special purpose vehicles similar to NP ELM should not be subject to the clearing obligation provided that certain conditions are met, a proposal published by the European Commission on 4 May 2017 to amend EMIR, suggests that securitisation special purpose vehicles (**SSPEs**) similar to NP ELM should be reclassified as financial counterparties for the purposes of EMIR (**Proposed Amendment**). However this Proposed Amendment was removed in the second and third compromise proposals that were published by the Council on 15 November 2017 and 28 November 2017, respectively. The Proposed Amendment is now also subject to scrutiny in the European Parliament. The European Parliament's Economic and Monetary Affairs Committee published a draft report dated 26 January 2018 on the Proposed Amendment, in which they also proposed that SSPEs would

remain outside the category of FC. This position was confirmed in the text adopted by the European Parliament in plenary session on 12 June 2018. Investors should consult their own independent advisers and make their own assessment about the potential risks posed by EMIR in making any investment decision in respect of the Henley Series I Notes.

**If NP ELM becomes subject to tax on a net income basis in the United States or the United Kingdom, NP ELM's performance could be materially and adversely affected**

NP ELM intends to conduct its affairs so that it will not be regarded as having a taxable presence in the United States or the United Kingdom.

Generally, a foreign corporation will be subject to U.S. federal tax on a net income basis with respect to income that is effectively connected with the conduct of a trade or business within the United States. NP ELM intends to rely on a statutory exception to this general rule to avoid being treated as engaged in the conduct of a trade or business within the United States. However, there is no definitive guidance directly addressing transactions involving structures and terms similar to or otherwise comparable with the contemplated activities of NP ELM for U.S. federal income tax purposes and there is a risk that NP ELM could be considered as carrying on a U.S. trade or business for U.S. federal income tax purposes. If that were the case then NP ELM would be subject to U.S. federal income tax on any U.S. source income and, potentially, on certain foreign source income, and may become subject to an additional 30% branch profits tax.

A non-UK incorporated company will be subject to UK corporation tax if, broadly, it (i) is tax resident in the UK, or (ii) carries on a trade in the UK through a permanent establishment (**PE**). A non-UK incorporated company would generally be regarded as having a PE in the UK if it has (i) a fixed place of business in the UK or (ii) a dependent agent in the UK who has and habitually exercises authority in the UK to do business on its behalf. A company which is tax resident in the UK is subject to UK corporation tax on all of its profits wherever they arise. A non-resident company which trades in the UK through a PE is only subject to corporation tax on the profit attributable to that PE.

NP ELM intends to be tax resident in Ireland and not in the UK. It intends to achieve this by ensuring that it is "centrally managed and controlled" in Ireland and not the UK.

The Portfolio Adviser or its delegates will act as portfolio adviser to NP ELM and, pursuant to such arrangement, certain UK based key personnel will be provided to NP ELM in order to assist it with the day-to-day running and management of its business. There is a risk that if NP ELM is "trading", it might be regarded as trading through a PE in the UK. NP ELM does not intend to trade. NP ELM also considers that the company's activities should not amount to a trade for UK tax purposes.

Although NP ELM considers its position in respect of central management and control and trading to be sustainable, each will ultimately be a question of fact to be determined by reference to the actual circumstances.

If an issuer is regarded as centrally managed and controlled in the UK and so UK tax resident or if its activities carried on in the UK are regarded as trading then such issuer would be subject to UK corporation tax on all of its profit (if tax resident in the UK) or on the profit attributable to its PE in the UK (if it is not tax resident in the UK but trading in the UK through a PE), with "profit" in each case being determined by reference to UK tax principles.

The imposition of any such unanticipated taxes could materially reduce the post-tax returns available for distributions on the Henley Series I Notes.

## **NP ELM's tax position may be affected by the implementation of the OECD Action Plan on Base Erosion and Profit Sharing**

Fiscal and taxation policy and practice is constantly evolving and at present the pace of evolution has been quickened due to a number of developments which include, but are not limited to, the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting project (BEPS).

One of the action points from this project (**Action 6**) is the prevention of treaty abuse by developing model treaty provisions to prevent the granting of treaty benefits in inappropriate circumstances. Whether NP ELM will be subject to UK corporation tax may depend on whether it can benefit from Articles 5 and 8 of the UK-Ireland double tax treaty if, contrary to its belief, it is regarded as trading in the UK.

The OECD recommendations on Action 6 are primarily being implemented into existing double tax treaties through a multilateral convention. The multilateral convention has been signed by over 75 jurisdictions (including the UK and Ireland). It entered into force on 1 July 2018 for signatories who deposited their ratification, acceptance or approval on or before 22 March 2018. For signatories who deposited or deposit their ratification, acceptance or approval after 22 March 2018, the multilateral convention comes into force at the start of the month which is three entire calendar months after such deposit takes place. The UK deposited its instrument of ratification on 29 June 2018 and therefore the multilateral convention came into force in respect of the UK on 1 October 2018. As at the date of this Private Placement Memorandum the multilateral convention has not been ratified by Ireland. The date from which provisions of the multilateral convention have effect in relation to a treaty depends on several factors including the type of tax which the relevant treaty article relates to.

Upon signing the multilateral convention Ireland provided a provisional list of expected reservations and notifications to be made pursuant to it. Upon ratifying the multilateral convention the UK deposited a non-provisional list of reservations and notifications to be made pursuant to it. Based on the information contained in these documents and the multilateral convention Action 6 would be implemented into the double tax treaties Ireland has entered into with the UK and other jurisdictions by the inclusion of a principal purpose test (PPT). Action 4 may also be relevant to NP ELM as discussed below.

Once in effect, a PPT would deny a treaty benefit where it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in those circumstances would be in accordance with the object and purpose of the relevant provisions of the treaty. It is currently unclear how a PPT, if adopted, would be applied by the UK and Irish tax authorities.

If NP ELM carries on investment activities as opposed to a trade in the UK, the incorporation of a PPT in the UK-Ireland double tax treaty should not affect NP ELM.

However, if NP ELM were to be regarded as trading, and if the UK-Ireland double tax treaty is amended to incorporate a PPT for Action 6 then there may be a risk that NP ELM could be treated as having a taxable PE in the UK (see the risk factor above for further information in relation to the circumstances in which NP ELM could be treated as having a UK permanent establishment for UK tax purposes).

If, as a consequence of the application of Action 6, UK tax was imposed on the net income or profits of NP ELM, the amount of UK tax due would likely be significant on the basis that some or all of the interest which it pays on the profit participating notes held by the Issuer may not be deductible for UK tax purposes. The imposition of any such unanticipated taxes could materially reduce the post-tax returns available for distributions on the Henley Series I Notes.

Investors should note that other action points which form part of the OECD BEPS project (such as Action 4, which could deny deductions for financing costs in certain circumstances) may be implemented in a manner

which could affect the tax position of NP ELM and reduce thereby post-tax returns available for distributions on the Henley Series I Notes.

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

As part of its anti-tax avoidance package, and to provide a framework for a harmonised implementation of a number of the BEPS conclusions across the EU, the EU Council adopted Council Directive (EU) 2016/1164 (the **Anti-Tax Avoidance Directive**) on 12 July 2016.

The EU Council adopted Council Directive (EU) 2017/952 (the **Anti-Tax Avoidance Directive 2**) on 29 May 2017, amending the Anti-Tax Avoidance Directive, to provide for minimum standards for counteracting hybrid mismatches involving EU member states and third countries.

EU member states must implement the Anti-Tax Avoidance Directive by 2019 (subject to derogations for EU member states which have equivalent measures in their domestic law) and have until 31 December 2019 to implement the Anti-Tax Avoidance Directive 2 (except for measures relating to reverse hybrid mismatches, which must be implemented by 31 December 2021).

The Directives contain various measures that could, depending on their implementation in Ireland, potentially result in certain payments made by the Issuer ceasing to be fully deductible. This could increase the Issuer's liability to tax and reduce the amounts available for payments on the Notes.

There are two measures of particular relevance.

Firstly, the Anti-Tax Avoidance Directive provides for an "interest limitation rule" which restricts the deductible interest of an entity to 30% of its earnings before interest, tax, depreciation and amortisation. However, the interest limitation only applies to the net borrowing costs of an entity (being the amount by which its borrowing costs exceed its taxable interest revenues and other economically equivalent taxable revenues).

Secondly, the Anti-Tax Avoidance Directive (as amended by the Anti-Tax Avoidance Directive 2) provides for hybrid mismatch rules. These rules are designed to neutralise arrangements where amounts are deductible from the income of one entity but are not taxable for another, or the same amounts are deductible for two entities. These rules could potentially apply to the Issuer where: (i) the interest that it pays under the Notes, and claims deductions from its taxable income for, is not brought into account as taxable income by the relevant Noteholder, either because of the characterisation of the Notes, or the payments made under them, or because of the nature of the Noteholder itself; and (ii) the mismatch arises between associated enterprises, between the Issuer and an associated enterprise or under a structured arrangement.

The exact scope of these two measures, and impact on the Issuer's tax position, will depend on the implementation of the measures in Ireland.

### **Withholding Tax on the Henley Series I Notes**

The Issuer will be able to make payments on the Henley Series I Notes free of any withholding tax where the Henley Series I Notes qualify for the quoted Eurobond exemption from withholding tax and the Henley Series I Noteholders confirm certain matters to the Issuer (see "*Tax Considerations: Ireland*" for further details). However, there can be no assurance that the law will not change or that payments will not otherwise be subject to withholding taxes. In particular, the Issuer has the right to withhold on all payments made to any beneficial owner of an interest in any of the Henley Series I Notes that fails to comply with its requests for identifying information to enable the Issuer to comply with FATCA (as defined below) or to certain FFIs (as defined below) that fail to comply with FATCA or an applicable IGA (as defined below). See "*Tax Considerations: Foreign Account Tax Compliance Act*" for further details.

In the event that any withholding tax or deduction for tax is imposed on payments of principal or interest on the Henley Series I Notes, the holders of the Henley Series I Notes will not be entitled to receive grossed-up amounts to compensate for such withholding tax or to require that their Henley Series I Notes be redeemed and no Event of Default or redemption of the Henley Series I Notes shall occur as a result of any such withholding or deduction.

Furthermore, to enable the Issuer to make payments to a Henley Series I Noteholder free of withholding tax and to ensure payments do not negatively impact the tax position of the Issuer, each Henley Series I Noteholder will be required to provide certain confirmations to the Issuer and may be required to provide certain identifying information. If a Henley Series I Noteholder fails to provide such confirmation or information, its payments from the Issuer may be subject to withholding. Please see the "*Tax Considerations: Ireland*" and "*Tax Considerations: Foreign Account Tax Compliance Act*" sections for further details.

**Different regulatory, tax or other treatment of the Issuer or the Henley Series I Notes in different jurisdictions, or changes to such treatment in different jurisdictions, may adversely impact Henley Series I Noteholders in certain jurisdictions**

For regulatory, tax and other purposes, the Issuer and the Henley Series I Notes may be treated in different ways in different jurisdictions. In certain jurisdictions, the treatment of the Issuer and/or the Henley Series I Notes may be uncertain or subject to change, or it may differ depending on the availability of certain information or disclosure by the Issuer of that information. The Issuer may be subject, therefore, to financially and logistically onerous requirements to disclose any or all of such information or to prepare or disclose such information in a form or manner which satisfies the regulatory, tax or other authorities in certain jurisdictions. The Issuer may elect not to disclose such information or prepare such information in a form which satisfies such authorities. Therefore Henley Series I Noteholders in such jurisdictions may be unable to satisfy the regulatory requirements to which they are subject.

**Changes in taxation legislation, or the rate of taxation, may adversely affect the Issuer**

Any change in the tax status of the Issuer, or in taxation legislation or practice in Ireland or elsewhere could affect the value of the Henley Series I Investment Notes held by the Issuer or the Issuer's ability to achieve its investment objectives. Statements in this Private Placement Memorandum concerning the taxation are based upon current Irish law and published practice as at the date of this Private Placement Memorandum, which law and practice is, in principle, subject to change (potentially with retrospective effect) that could adversely affect the ability of the Issuer to meet its investment objective and which could adversely affect the taxation of the Issuer.

Potential investors are urged to consult their tax advisers with respect to their particular tax situations and the tax effect of an investment in the Henley Series I Notes.

**EU financial transaction tax**

On 14 February 2013, the European Commission issued proposals, including a draft Directive (the **Commission's proposal**) for a financial transaction tax ("**FTT**") to be adopted in certain participating EU member states (including Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia (the **Participating Member States**), although Estonia has since stated that it will not participate). If the Commission's proposal was adopted, the FTT would be a tax primarily on "financial institutions" (which would include the Issuer) in relation to "financial transactions" (which would include the conclusion or modification of derivative contracts and the purchase and sale of financial instruments).

Under the Commission's proposal, the FTT could apply in certain circumstances to persons both within and outside of the Participating Member States. Generally, it would apply where at least one party is a financial institution, and at least one party is established in a Participating Member State. A financial institution may be, or be deemed to be, "established" in a Participating Member State in a broad range of circumstances, including

(a) by transacting with a person established in a Participating Member State or (b) where the financial instrument which is subject to the financial transaction is issued in a Participating Member State.

The FTT may give rise to tax liabilities for the Issuer with respect to certain transactions (including concluding swap transactions and/or purchases or sales of securities) if it is adopted based on the Commission's proposal. Any such tax liabilities may reduce amounts available to the Issuer to meet its obligations under the Henley Series I Notes and may result in investors receiving less interest or principal than expected. It should also be noted that the FTT could be payable in relation to relevant transactions by investors in respect of the Henley Series I Notes (including secondary market transactions) if the conditions for a charge to arise are satisfied and the FTT is adopted based on the Commission's proposal. Primary market transactions referred to in Article 5(c) of Regulation (EC) No 1287/2006 are expected to be exempt.

The FTT proposal remains subject to negotiation between Participating Member States. It may therefore be altered prior to implementation, the timing of which remains unclear. Additional EU member states may decide to participate. Prospective holders of the Henley Series I Notes are advised to seek their own professional advice in relation to the FTT.

### **Foreign Account Tax Compliance Act (FATCA) withholding may affect the Issuer, NP ELM or the Henley Series I Notes**

Provisions of law commonly referred to as "FATCA" impose an information reporting regime and, potentially, a 30 per cent. withholding tax with respect to (i) certain payments from sources within the United States and gross proceeds from the disposition of property which produces certain U.S. source income, (ii) "foreign passthru payments" made to certain non-U.S. financial institutions that do not comply with this new reporting regime, and (iii) payments to certain investors that do not provide identification information with respect to interests issued by a participating non-U.S. financial institution. It is expected that each of the Issuer and NP ELM will be classified as a financial institution for these purposes.

Each of the Issuer and NP ELM will use best efforts to comply with the intergovernmental agreement between the United States and Ireland with respect to FATCA (the **US-Ireland IGA**), and the Irish legislation and regulations implementing the US-Ireland IGA (including the required registration with the U.S. Internal Revenue Service ("IRS")). If, however, NP ELM fails to comply with the IGA and becomes subject to withholding under FATCA, it would be subject to a 30 per cent. withholding tax on any U.S. source interest payments and, beginning in 2019, proceeds from the sale of U.S. Collateral Obligations or certain CLO Investments and, potentially, on payments and proceeds with respect to non-U.S. Collateral Obligations or CLO Investments, which could materially affect the Issuer's ability to make payments on the Henley Series I Notes.

The Issuer expects to require (and other intermediaries through which Henley Series I Notes are held are expected to require) each Henley Series I Noteholder to provide certifications and identifying information about itself and its beneficial owners in order to enable the Issuer (or an intermediary) to identify and report on certain Henley Series I Noteholders and certain of the Henley Series I Noteholder's direct and indirect U.S. owners or controlling persons to the IRS or the Irish Revenue Commissioners. The Issuer (and intermediaries through which such Henley Series I Notes are held) may also be required to withhold on payments to Henley Series I Noteholders that do not provide the required information, or that are "foreign financial institutions" that are not compliant with, nor exempt from, FATCA. Although certain exceptions to these disclosure requirements could apply, the failure to provide the required information may give the Issuer (or an intermediary) the right to sell the Henley Series I Noteholder's Henley Series I Notes (and such sale could be for less than its then fair market value). See Condition 9.4 (*Forced Transfer*).

If an amount in respect of FATCA were to be deducted or withheld either from amounts due to NP ELM or the Issuer or from interest, principal or other payments made in respect of the Henley Series I Notes, neither the Issuer, the Principal Paying Agent nor any other person would, pursuant to the Conditions of the Henley Series I Notes, be required to pay additional amounts as a result of the deduction or withholding. As a result, investors

may receive less interest or principal than expected. Prospective investors should refer to the summary under "*Tax Considerations - Foreign Account Tax Compliance Act*" below

**The application of U.S. passive foreign investment company and controlled foreign corporation rules may affect the Henley Series I Noteholders**

It is highly likely that the Issuer will be treated as a passive foreign investment company (**PFIC**) for U.S. federal income tax purposes, which means that a U.S. Henley Series I Noteholder may be subject to adverse tax consequences unless such Henley Series I Noteholder elects to treat the Issuer as a qualified electing fund and to recognise currently such Henley Series I Noteholder's proportionate share of the Issuer's ordinary income and long term capital gain whether or not distributed to such U.S. Henley Series I Noteholder. In addition, depending on the overall ownership of interests in the Issuer, a U.S. Henley Series I Noteholder of more than 10 per cent. of the Henley Series I Notes may be treated as a U.S. shareholder in a controlled foreign corporation (**CFC**) and required to recognise currently its proportionate share of the "subpart F income" of the Issuer, whether or not distributed to such U.S. Henley Series I Noteholder. It is also possible that any entity in which the Issuer holds a direct or indirect interest that is treated as a corporation for U.S. federal income tax purposes, including NP ELM, any Retention CLOs and subsidiaries thereof, may be a PFIC and/or a CFC such that the PFIC and/or CFC rules would apply to a Henley Series I Noteholder's indirect interest in such entity. A U.S. Henley Series I Noteholder that makes a qualified electing fund election, or that is required to include subpart F income, may recognise income in amounts significantly greater than the payments received from the Issuer.

The Issuer will cause its independent accountants to provide U.S. Henley Series I Noteholders, upon request by such U.S. Henley Series I Noteholder and at such U.S. Henley Series I Noteholder's expense, with the information reasonably available to the Issuer that a U.S. Henley Series I Noteholder would need to make a qualified electing fund election and satisfy filing requirements under the PFIC and CFC rules. However, no assurance can be given that the Issuer will be able to obtain such information. Potential Henley Series I Noteholders should consult with their tax advisers regarding the applications of the PFIC and CFC rules and the applicability of such rules to each such potential Henley Series I Noteholder.

**Withholding on the Aggregate Portfolio**

There can be no assurance that payments to NP ELM in respect of its assets, including in respect of the Aggregate Portfolio will not be subject to withholding. Accordingly, a potential Henley Series I Noteholder should consult its own tax advisers as to the potential implication of withholding taxes on the Henley Series I Notes before investing.

**The Issuer is subject to risks, including the location of its COMI and tax residence, the appointment of examiners, enforcement of security, claims of preferred creditors and floating charges.**

**COMI**

Under Regulation (EU) No. 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), the Issuer's centre of main interests (**COMI**) is presumed to be the place of its registered office (i.e. Ireland) in the absence of proof to the contrary and provided that the Issuer did not move its registered office within the three months prior to a request to open insolvency proceedings.

As the Issuer's COMI is presumed to be Ireland, any main insolvency proceedings in respect of the Issuer would fall within the jurisdiction of the courts of Ireland. As to what might constitute "proof to the contrary" regarding the location of a company's COMI, the key decision is that in *Re Eurofood IFSC Ltd* ([2004] 4 IR 370 (Irish High Court); [2006] IESC 41 (Irish Supreme Court); [2006] Ch 508; ECJ Case C-341/04 (European Court of Justice), given in respect of the equivalent provision in Regulation (EC) No. 1346/2000 (the previous EU insolvency regulation). In that case, on a reference from the Irish Supreme Court, the European Court of Justice concluded that "factors which are both objective and ascertainable by third parties" would be needed to demonstrate that a company's actual situation is different from that which the location of its registered office is

deemed to reflect. For instance, if a company with its registered office in Ireland does not carry on any business in Ireland, that could rebut the presumption that the company's COMI is in Ireland. However, if a company with its registered office in Ireland does carry on business in Ireland, the fact that its economic choices are controlled by a parent undertaking in another jurisdiction would not, of itself, be sufficient to rebut the presumption. As the Issuer has its registered office in Ireland, is registered for tax in Ireland, has an Irish corporate services provider and all of its Directors are resident 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.

### ***Tax Residence***

The Issuer believes that it is tax resident solely in Ireland and does not have a permanent establishment for tax purposes outside of Ireland. However, there is no guarantee that the Irish Revenue Commissioners, or any other tax authorities in another jurisdiction, will not take a different view. If the Issuer is found to be tax resident in a jurisdiction other than Ireland, or to have a permanent establishment in any other jurisdiction, this could result in additional tax liabilities of the Issuer which could have adverse consequences for the Henley Series I Noteholders.

### ***Examinership***

Examinership is a court procedure available under Section 509 of the Irish Companies Act 2014 (as amended) to facilitate the survival of Irish companies in financial difficulties.

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

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

If an examiner were appointed while any amounts due by the Issuer under the Henley Series I Notes were unpaid, the primary risks to the Henley Series I Noteholders would be as follows:

- (a) the Trustee acting on behalf of the Henley Series I Noteholders or the Henley Series I Noteholders themselves would not be able to enforce rights against the Issuer during the period of examinership;
- (b) the examiner can deal with properties the subject of a floating charge; and
- (c) a scheme of arrangement may be approved involving the writing down of the debt due by the Issuer to the Henley Series I Noteholders.

### ***Preferred Creditors***

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

- (a) under the terms of the Henley Series I Trust Deed, the Issuer will assign by way of security to the Trustee on behalf of Henley Series I Noteholders by way of fixed first ranking security interest (the **Security Interest**) as security for its payment obligations in respect of the Henley Series I Notes certain rights under the Mortgaged Property. Under Irish law, the claims of the creditors holding fixed security interests may rank behind other claims (namely fees, costs and expenses of any examiner appointed and certain capital gains tax liabilities) and may rank behind claims of the Irish Revenue Commissioners for PAYE, PRSI, VAT and local property tax;
- (b) under Irish law, for a charge to be characterised as a fixed security interest, the holder of the charge or assignment is required to exercise the requisite level of control over the assets purported to be secured and the proceeds of such assets including any bank account into which such proceeds are paid. There is a risk therefore that even a security interest which purports to be taken as a fixed security interest, such as the Security Interest, may take effect as a floating charge if a court deems that the requisite level of control was not exercised; and
- (c) in an insolvency of the Issuer, the claims of certain other creditors (including the Irish Revenue Commissioners for certain unpaid taxes), as well as those of creditors mentioned above, will rank in priority to claims of unsecured creditors and claims of creditors holding floating charges.

## **6. CONFLICTS OF INTEREST RELATING TO THE PORTFOLIO ADVISER**

Various potential and actual conflicts of interest may arise from the advisory and other activities of the Portfolio Adviser, the Sub-Portfolio Advisers or any of their Affiliates and/or delegates (the **Adviser Parties**) and their respective clients or as party to or in connection with the Portfolio Advisory Agreement. The following briefly summarises some of these conflicts, but is not intended to be an exhaustive list of all such conflicts.

The Adviser Parties and their clients may invest in debt obligations that would be appropriate as investments for the Aggregate Portfolio. Such investments may be different from those advised on for the purposes of investment by NP ELM. Affiliates of individuals employed or otherwise associated with the Adviser Parties may possess information relating to obligors in respect of Collateral Obligations, CLO Investments or underlying obligations held by CLOs in which NP ELM may invest which is not known to the individuals at the Adviser Parties responsible for performing the obligations under the Portfolio Advisory Agreement. In addition, Affiliates and clients of the Adviser Parties may invest in debt obligations that are senior to, or have interests different from or adverse to, the Aggregate Portfolio. The Adviser Parties and/or their Affiliates may also at certain times be simultaneously seeking to purchase or dispose of investments for their own account or for any similar entity for which they may serve as manager or adviser and for their clients or Affiliates

The Adviser Parties and their Affiliates are not under any obligation to offer investment opportunities of which they have become aware to NP ELM. The Adviser Parties will endeavour to resolve conflicts with respect to investment opportunities in a manner which they deem reasonable to the extent possible under the prevailing facts and circumstances. Although the professional staff of the Adviser Parties will devote as much time to NP ELM as each such party deems appropriate to perform its duties in accordance with the Portfolio Advisory Agreement, those staff may have conflicts in allocating their time and services among NP ELM's and their other accounts.

In addition, the Adviser Parties and/or their Affiliates may have ongoing relationships (including, without limitation, the provision of investment banking, commercial banking and investment management or advisory

services or engaging in securities derivatives transactions) with obligors of the Aggregate Portfolio and/or underlying obligations held by CLOs in which NP ELM may invest and may own equity or other securities of such obligors while also maintaining ongoing relationships (including, without limitation, the provision of advisory services or engaging in securities derivatives transaction) with purchasers of the Henley Series I Notes. NP ELM may invest in the securities of companies affiliated with the Adviser Parties or their respective Affiliates or companies in which the Adviser Parties or their respective Affiliates have an equity or participation interest. The purchase, holding and sale of such investments by NP ELM may enhance the profitability of the Adviser Parties' or their Affiliates' own investments in such companies.

There is no limitation or restriction on the Adviser Parties or any of their respective Affiliates with regard to acting as portfolio manager or adviser (or in a similar role) to other parties or persons. This and other future activities of the Adviser Parties and/or their Affiliates may give rise to additional conflicts of interest.

The Adviser Parties may, notwithstanding any other provisions of the Portfolio Advisory Agreement, at any time refrain from advising NP ELM on effecting the acquisition or sale of obligations: (i) of persons of which the Adviser Parties, their Affiliates, or any of their or their Affiliates' officers, partners, directors or employees are officers, partners, directors or employees; (ii) of persons for which the Adviser Parties or any of their Affiliates act as financial advisers or underwriter; (iii) of persons about which an Adviser Party has information which such party deems confidential, non-public, price sensitive or which otherwise might prohibit it from trading such assets in accordance with applicable laws including without limitation any insider dealing laws; or (iv) of persons whose obligation an Adviser Party has recommended be acquired by a vehicle or fund in respect of whose assets the such party acts as portfolio manager or adviser.

Certain members of the NP ELM Board, the Investment Committee and the Portfolio Management Team may have been or are associated with and/or may be employed by the Portfolio Adviser.

The Portfolio Adviser may advise NP ELM in respect of effecting client cross transactions between NP ELM and another account advised or managed by an Adviser Party. Client cross transactions enable the Portfolio Adviser to advise NP ELM to purchase or sell a block of securities at a set price and possibly avoid an unfavourable price movement that may be created through entrance into the market with such purchase or sell order. In addition, the Portfolio Adviser may advise NP ELM to enter into agency cross transactions where an Adviser Party acts as broker for the Issuer and for the other party to the transaction, in which case any such Adviser Party will receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding, both parties to the transaction. Cross transactions described in this paragraph (as with the purchase or sale of any Aggregate Portfolio asset) must be approved by a clear majority of Investment Committee Members, provided that the Committee Chairman has voted in favour of such transaction.

**THE CONSIDERATIONS SET OUT ABOVE ARE NOT, AND ARE NOT INTENDED TO BE, A COMPREHENSIVE LIST OF ALL CONSIDERATIONS RELEVANT TO A DECISION TO PURCHASE OR HOLD ANY NOTES.**

## MASTER DEFINITIONS

The terms below have the following meaning when used in this Private Placement Memorandum and the Transaction Documents (so far as they relate to the Henley Series I Notes) unless expressly stated otherwise:

**Account Bank** means Elavon Financial Services DAC and any successor thereto.

**Account Bank Resignation Date** has the meaning specified in Clause 12.7(b) (*Replacement of Account Bank*) of the Agency Agreement.

**Accounting Period** means the accounting period of NP ELM for the purposes of IFRS.

**Accounts** means the Proceeds Account and the Cash Account.

**Accounts Amount** means the Proceeds Account Amount and the NP ELM Account Amount.

**Adjustment Factor** has the meaning given to it in Condition 15 (*Further Henley Series I Notes and Other Series Notes*).

**Administrative Expenses** means all fees, liabilities, costs, expenses and any other amounts payable by the Issuer pursuant to or as contemplated by the Transaction Documents (including any indemnity payments thereunder and any such amounts attributable to the establishment of the structure constituted by the Transaction Documents) payable in the following order of priority (in each case, together with any unpaid applicable value added tax (including any reverse charge value added tax) thereon whether payable to that party or the relevant tax authority):

- (a) *pro rata* and *pari passu* to the Agents pursuant to the Agency Agreement and any other Transaction Document;
- (b) to the Corporate Services Provider pursuant to the Corporate Services Agreement;
- (c) to any other person pursuant to the Transaction Documents; and
- (d) to any person in respect of any governmental fee or charge,

if and to the extent the Portfolio Advisor reasonably determines that such amounts are attributable to Henley Series I or, where it determines such amounts are attributable to Henley Series I and any Other Series, a proportion of such amounts determined on a *pro rata* basis as between Henley Series I and each such Other Series.

**Affected Notes** has the meaning given to it in Condition 9.4 (*Forced Transfer*).

**Affiliate** means, in relation to any entity (the **First Entity**), any entity controlled, directly or indirectly, by the First Entity, any entity that controls, directly or indirectly, the First Entity or any entity directly or indirectly under common **control** with the First Entity. For these purposes control means ownership of a majority of the voting power of an entity and **Affiliates** shall be construed accordingly.

**Agency Agreement** means the agency agreement entered into between the Issuer, NP ELM, the Trustee, the Principal Paying Agent, the Account Bank, the Collateral Administrator, the Custodian and the Registrar dated 1 February 2016 (as amended from time to time).

**Agents** means the Principal Paying Agent, the Collateral Administrator, the Account Bank, the Registrar and the Custodian and shall include such further or other person or persons as may be appointed from time to time an

agent under the Agency Agreement and, except for the purposes of Clause 24 (*Changes in Agents*) to the Agency Agreement, references to Agents are to them acting solely through their specified offices.

**Aggregate Funding Amount** means, at any time in respect of the Henley Series I Notes, the aggregate of each Funding Amount funded by Henley Series I Noteholders.

**Aggregate Portfolio** means each portfolio of Collateral Obligations and CLO Investments held by or on behalf of NP ELM from time to time.

**AIFM Directive** means the European Union Directive 2011/61/EU on Alternative Investment Fund Managers (as amended from time to time and as implemented by EU member states) together with any implementing or delegated regulations, technical standards and guidance related thereto as may be amended, replaced or supplemented from time to time.

**Applicable Law** means any law or regulation including, but not limited to: (a) any domestic or foreign statute or regulation; (b) any rule or practice of any Authority, stock exchange or self-regulatory organisation with which an Agent is bound or accustomed to comply; and (c) any agreement entered into by an Agent and any Authority or between any two or more Authorities.

**Applicable Requirements** means applicable laws and regulations in any jurisdiction and, if applicable, any governmental or market authority rules, in any jurisdiction to which NP ELM or the Portfolio Adviser or any Sub-Portfolio Adviser of any of them is subject, in each case for the time being in force together with all licenses, consents and regulatory approvals required thereunder.

**Application of Proceeds** has the meaning given in Condition 6.2 (*Application of Proceeds*).

**Appointee** means any attorney, manager, agent, delegate, nominee, custodian or other person appointed by the Trustee under the Henley Series I Trust Deed.

**Authorised E-mail Address** means an e-mail address specified in in Schedule 2 (*Form of Authorised Representatives and Call-Back Contacts*) to the Agency Agreement, as amended.

**Authorised Representative** means a person named in Part 1 of Schedule 2 (*Form of Authorised Representatives and Call-Back Contacts*) to the Agency Agreement, as amended.

**Authority** means any competent regulatory, prosecuting, tax or governmental authority in any jurisdiction, domestic or foreign.

**Benefit Plan Investor** means:

- (a) an employee benefit plan (as defined in Section 3(3) of ERISA), subject to the provisions of Part 4 of Subtitle B of Title I of ERISA;
- (b) a plan to which Section 4975 of the Code applies; or
- (c) any entity whose underlying assets include plan assets by reason of such an employee benefit plan or plan's investment in such entity.

**Board** means the board of directors of the Issuer.

**Business Day** means (save to the extent otherwise defined) a day:

- (a) on which TARGET2 is open for settlement of payments in Euro; and

- (b) on which commercial banks and foreign exchange markets settle payments in London (other than a Saturday or a Sunday).

**Call-back Contact** means a person named in Part 2 of Schedule 2 (*Form of Authorised Representatives and Call-Back Contacts*) to the Agency Agreement, as amended.

**Cash** means all cash or cash equivalent in any currency received from, held for, or payable to, the Issuer by the Custodian under the terms of the Agency Agreement.

**Cash Account** means an interest bearing account of NP ELM in the name of NP ELM entitled “*Cash Account (Henley Series I)*” and held with the Account Bank.

**Central Bank** means the Central Bank of Ireland.

**Clearance System** means any clearing house, settlement system, payments system, or depository (including any dematerialised book entry system or entity that acts as a system for the central handling of Securities in the country where it is incorporated or organised or that acts as a transnational system for the central handling of Securities), whether or not acting in that capacity, or other financial market utility or organised trading facility used in connection with transactions relating to Securities or Cash and any nominee of the foregoing.

**Client Money Rules** means the FCA Rules in relation to client money from time to time.

**CLO** means a collateralised loan obligation transaction or, if the context so requires, any securities issued in respect thereof.

**CLO Investment Sale Proceeds** means sale proceeds from the sale of:

- (a) in respect of CLO Investments which fall under paragraph (A) of the definition of CLO Investments, CLO securities in excess of the CLO Retention Investment, but only to the extent the Controlling Stake of such Retention CLO is maintained; and
- (b) in respect of CLO Investments which fall under paragraph (B) of the definition of CLO Investments, CLO Investments greater than the Controlling Stake in such CLO (including where the Controlling Stake is held by NP ELM together with the Napier Funds),

provided in each case that any such sale occurs during the period of 24 months after the Issue Date.

**CLO Investments** means subordinated tranche securities that are (A) CLO Retention Investments (or if greater, a Controlling Stake in a Retention CLO); and (B) investments in other European CLOs where NP ELM on its own or together with any Napier Funds holds at least a Controlling Stake in such CLO and, for the avoidance of doubt, are in respect of CLOs of which the Portfolio Adviser (or any Affiliate thereof) acts as collateral manager.

**CLO Redemption Amount** means NP ELM Henley Series I Proceeds received by NP ELM representing the receipt of redemption, sale or principal distribution proceeds in respect of a CLO Investment which formed part of the Henley Series I Portfolio other than CLO Investment Sale Proceeds.

**CLO Retention Investments** means CLO Investments issued by Retention CLOs which NP ELM has committed to retain on an ongoing basis with the intention of satisfying the EU Retention Requirements.

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

**Collateral Administrator** means Elavon Financial Services DAC and any successor thereto.

**Collateral Manager** means a CLO collateral manager who is the Portfolio Adviser (or any Affiliate thereof).

**Collateral Obligation Proceeds** means, any amounts received by NP ELM pursuant to its investment in the Collateral Obligations.

**Collateral Obligations** means the credit assets acquired and held by NP ELM from time to time in the primary and secondary markets, being debt obligations in the form of senior, mezzanine and second lien loans, high yield bonds, floating rate notes and similar credit assets, CLO securities and investments in CLO warehouse facilities by way of debt and/or equity managed by the Collateral Manager, and other investments facilitating NP ELM's ability to make CLO Investments, including Retention Financing, but excluding CLO Investments.

**Commitment Amount** means, in respect of a Henley Series I Noteholder, such Henley Series I Noteholder's committed funding amount pursuant to the applicable Henley Series I Note Issuing and Purchase Agreement.

**Committed Investments** has the meaning given to it at Condition 12.2 (*Key Person Event*).

**Committee Chairman** means the chairman of the Investment Committee.

**Conditions** means the terms and conditions of the Henley Series I Notes set out at Schedule 5 (*Terms and Conditions of the Henley Series I Notes*) to the Henley Series I Trust Deed.

**Controlling Person** means a person (other than a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the Issuer or who provides investment advice for a fee (direct or indirect) with respect to such assets or any affiliate of any such person.

**Controlling Stake** means, in respect of a CLO, an amount of the subordinated tranche of the relevant CLO sufficient to enable a vote for an early redemption of such CLO in accordance with its terms, in order to be able to exercise the optional call rights granted to the holders of the subordinated tranche of such CLO.

**Core Investment Strategy** means the core investment strategy of:

- (a) the Issuer investing, through NP ELM, in Collateral Obligations and CLO Investments; and
- (b) NP ELM periodically establishing Retention CLOs, securitising Collateral Obligations into the Retention CLOs and investing in CLO Retention Investments of the applicable Retention CLO.

**Corporate Services Agreement** means the agreement between the Issuer and the Corporate Services Provider pursuant to which the Corporate Services Provider performs various management functions on behalf of the Issuer and NP ELM.

**Corporate Services Provider** means Intertrust Management Ireland Limited which term shall include any successor corporate services provider appointed pursuant to the terms of the Corporate Services Agreement.

**Credit Facility** means debt financing by NP ELM by way of entry into one or more credit facilities available to it from time to time.

**CRR** the Capital Requirements Regulation (Regulation (EU) No 575/2013) (as the same may be amended from time to time).

**Custodian** means Elavon Financial Services DAC and any successor thereto.

**Custody Account** has the meaning specified in Clause 13.2(a) (*Accounts*) to the Agency Agreement.

**Definitive Certificate** means a certificate representing one or more Henley Series I Notes in definitive, fully registered, form.

**Denomination** means the amount(s) in which the Henley Series I Notes are denominated as specified in Condition 2 (*Form, Denomination and Title*).

**Directors** means the directors of the Issuer.

**Eligible Investor** means a person who is a Qualifying Noteholder and is either:

- (a) not a U.S. person (as such term is defined in Regulation S under the Securities Act);
- (b) an "accredited investor" as defined in paragraph (1), (2), (3) or (7) of Rule 501(a) under the Securities Act and a QP ; or
- (c) is an "accredited investor" as defined in Rule 501(a) under the Securities Act and a Knowledgeable Employee.

**Enforcement Event** means the occurrence of an Early Redemption Date pursuant to the terms of Investment Note Condition 11 (*Events of Default*).

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

**EU Retention Requirements** means, as applicable:

- (i) Article 17 of European Union Directive 2011/61/EU, as implemented by Section 5 of the European Union Commission Delegated Regulation (EU) No 231/2013;
- (ii) Articles 404-410 (inclusive) of the CRR; and
- (iii) Articles 254 and Article 256 of Commission Delegated Regulation (EU) 2015/35 as amended from time to time,

in each case together with any guidance published in relation thereto including any regulatory and/or implementing technical standards, and any successor or replacement provisions thereto.

**Euro, Euros, euro and €** means the lawful currency of the Member States of the European Union that have adopted and retain the single currency in accordance with the Treaty on the Functioning of the European Union, as amended from time to time; provided that if any member state or states ceases to have such single currency as its lawful currency (such member state(s) being the **Exiting State(s)**), the euro shall, for the avoidance of doubt, mean for all purposes the single currency adopted and retained as the lawful currency of the remaining member states and shall not include any successor currency introduced by the Exiting State(s).

**Euro zone** means the region comprised of Member States of the European Union that have adopted the single currency in accordance with the Treaty on the Functioning of the European Union, as amended.

**Euronext Dublin** means The Irish Stock Exchange plc, trading as Euronext Dublin and/or any other or further stock exchange(s) or securities market(s) on which any Henley Series I Notes may from time to time be listed or on which any Henley Series I Notes are from time to time to be listed.

**Event of Default** has the meaning given to it in Condition 12 (*Events of Default*).

**Expense Proceeds** means each payment received by the Issuer from time to time on the Henley Series I Investment Notes which have been designated by NP ELM in accordance with Investment Note Condition 6 (*Distributions*) as being Expense Proceeds.

**Extraordinary Resolution** means a resolution passed at a meeting of Henley Series I Noteholders duly convened and held in accordance with the Henley Series I Trust Deed by a majority consisting of at least 66 $\frac{2}{3}$ %.

of votes cast in Aggregate Funding Amount of the Henley Series I Notes or a resolution in writing signed by or on behalf of Henley Series I Noteholders holding at least 66⅔% of the Aggregate Funding Amount of the Henley Series I Notes entitled to be voted in respect of such resolution had a meeting in respect thereof been convened.

**FATCA** means:

- (a) Sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the U.S. and any other jurisdiction, which (in either case) facilitates the implementation of any law or official guidance referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law, regulation or other official guidance 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.

**FATCA Compliance** means compliance with FATCA.

**FCA** means the United Kingdom Financial Conduct Authority.

**FCA Rules** means the rules and guidance from time to time set out in the FCA Handbook of Rules and Guidance (or such corresponding rules and guidance as might succeed them).

**Force Majeure Event** means any event (including but not limited to an act of God, fire, epidemic, explosion, floods, earthquakes, typhoons; riot, civil commotion or unrest, insurrection, terrorism, war, strikes or lockouts; nationalisation, expropriation, redenomination or other related governmental actions; any Applicable Law of an Authority or supranational body; regulation of the banking or securities industry including changes in market rules, currency restrictions, devaluations or fluctuations; market conditions affecting the execution or settlement of transactions or the value of assets; and breakdown, failure or malfunction of any telecommunications, computer services or systems, or other cause) beyond the control of any party which restricts or prohibits the performance of the obligations of such party contemplated by a Transaction Document.

**Forward Purchase Agreement** means any agreement between NP ELM and a CLO pursuant to which such CLO agrees to acquire Collateral Obligations from NP ELM.

**Funding Amount** has the meaning given to it in Condition 5.1 (*Funding Amount*).

**Funding Date** means the date designated as such in the applicable Funding Notice.

**Funding Notice** means a notice of drawing substantially in the form set out in Schedule 2 (*Funding Notice*) of each Henley Series I Note Issuing and Purchase Agreement.

**Funding Share** means, in respect of a Henley Series I Noteholder at any time, a percentage equal to such Henley Series I Noteholder's Commitment Amount divided by the aggregate Commitment Amounts in respect of all the Henley Series I Notes.

**Further Issuance Date** has the meaning given to it in Condition 15 (*Further Henley Series I Notes and Other Series Notes*).

**Further Henley Series I Investment Notes** means any further profit participating notes issued pursuant to Investment Note Condition 13 (*Further Henley Series I Investment Notes*) and which shall be consolidated with and form a single series with the Henley Series I Investment Notes.

**Further Henley Series I Notes** means any further notes issued pursuant to Condition 15 (*Further Henley Series I Notes and Other Series Notes*) and which shall be consolidated with and form a single series with the Henley Series I Notes.

**Gross Negligence** means conduct constituting negligence but only where a person has acted with a wilful or reckless disregard for the obvious consequences of their actions or inactions.

**Hedging Liabilities** means liabilities of NP ELM arising out of any spot, forward, swap or options transactions entered into by NP ELM for the purposes of hedging, including in respect of any collateral provided on such hedges, if and to the extent the Portfolio Advisor reasonably determines that such liabilities are attributable to Henley Series I or, where it determines such amounts are attributable to Henley Series I and any Other Series, a proportion of such amounts determined on a pro rata basis as between Henley Series I and each such Other Series.

**Henley Series I** means the transaction effected pursuant to the Transaction Documents in respect of the Henley Series I Portfolio.

**Henley Series I Distribution Proceeds** means each payment received by the Issuer from time to time on the Henley Series I Investment Notes and the Henley Series I Shares, whether in the nature of principal, interest, dividends, other distributions or otherwise, excluding amounts designated as Expense Proceeds.

**Henley Series I Investment Note Certificate** means a certificate representing one or more Henley Series I Investment Notes in definitive, fully registered, form.

**Henley Series I Investment Notes** means the Henley Series I profit participating notes issued by NP ELM and subscribed for by the Issuer, which term shall include any further Henley Series I profit participating notes issued by NP ELM and subscribed for by the Issuer with the proceeds of issuance of Further Henley Series I Investment Notes. For the avoidance of doubt, “Henley Series I Investment Notes” shall not include any profit participating notes in respect of any Other Series.

**Henley Series I Note Issuing and Purchase Agreement** means a note issuing and purchase agreement entered into by the Issuer and each initial Henley Series I Noteholder on or about the Issue Date.

**Henley Series I Note Payment Date** means each NP ELM Henley Series I Payment Date.

**Henley Series I Noteholder** means the holder of any Henley Series I Note with a registered holding in the Register.

**Henley Series I Notes** means the EUR 181,150,000 Henley Series I Notes constituted by the Henley Series I Trust Deed and any Further Henley Series I Notes with the ISIN number IE00BHR3ZX87.

**Henley Series I Portfolio** means the portfolio of Collateral Obligations and CLO Investments held by or on behalf of NP ELM from time to time and designated in the Portfolio Database as forming part of the “*Henley Series I Portfolio*”.

**Henley Series I Shares** means the 5 class E shares of €1 each in the share capital of NP ELM (which such Henley Series I Shares shall be non-transferable, non-voting and non-dividend-bearing) subscribed for by the Issuer, which term shall include any further class E shares issued by NP ELM and subscribed for by the Issuer with the proceeds of issuance of Further Henley Series I Notes. For the avoidance of doubt, “Henley Series I Shares” shall not include any other classes of shares in the capital of NP ELM.

**Henley Series I Trust Deed** means the trust deed securing and constituting the Henley Series I Notes entered into by the Issuer and the Trustee on the Issue Date.

**IFRS** means the international financial reporting standards as adopted by the European Union.

**Insolvency Law** means any applicable liquidation, insolvency, bankruptcy, composition, reorganisation or other similar laws.

**Instruction** means any Payment Instruction or any written instructions in relation to the Securities received by the Custodian and given or purporting to have been given by any Authorised Representative entitled to instruct the Custodian pursuant to the Agency Agreement, including any instructions communicated via authenticated email and/or any default or standing instruction put in place by NP ELM relating to the Securities or any other instruction, communication or direction which the Account Bank or Custodian is entitled to rely on for the purposes of the Agency Agreement.

**Investment Committee** means the investment committee of NP ELM appointed to take substantive investment decisions in respect of the Aggregate Portfolio.

**Investment Committee Rules** means the rules of the Investment Committee as approved by the NP ELM Board on 28 January 2016 and as amended from time to time.

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

**Investment Note Conditions** means terms and conditions of the Henley Series I Investment Notes set out at Schedule 2 (*Conditions of the Henley Series I Investment Notes*) to the NP ELM Henley Series I Investment Note Issuing and Purchase Agreement.

**Investment Note Redemption Amount** means an amount equal to the net proceeds received by NP ELM from payment on, and/or liquidation of, the Henley Series I Portfolio.

**Investment Noteholder** means Napier Park Europe Loan Management Designated Activity Company.

**IRR** means, with respect to each NP ELM Henley Series I Payment Date, the annualised internal rate of return on the Henley Series I Investment Notes (computed using the "XIRR" function in Microsoft® Excel or, if Microsoft® Excel or an equivalent function in another software package).

**Issue Date** means on or about 29 March 2019 (or such other date as may be agreed between the Issuer, NP ELM and the Portfolio Adviser and is notified in writing to the Trustee, the Collateral Administrator and the Noteholders in accordance with Condition 14.6 (*Notices*) and Euronext Dublin).

**Issuer** means Napier Park Europe Loan Management Designated Activity Company.

**Issuer Profit Amount** means the payment on each Henley Series I Note Payment Date, being an amount representing an aggregate maximum amount of €1,000 per annum, to the Issuer as a fee for entering into the transaction.

**Key Person Event** has the meaning given to it at Condition 12.2 (*Key Person Event*).

**Key Person** means has the meaning given to it at Condition 12.2 (*Key Person Event*).

**Knowledgeable Employees** has the meaning given to it in Rule 3c-5 of the Investment Company Act.

**KYC Procedures** means an Agent's procedures relating to the verification of the identity (including, if applicable, beneficial ownership) and business of its potential and existing clients.

**Liability** means any loss, damage, cost, charge, claim, demand, expense, judgment, action, proceedings, or other liability whatsoever (including, without limitation, in respect of taxes, duties, levies, imposts and other charges)

and including any value added tax or similar tax charged or chargeable in respect thereof and fees and expenses of any legal or other professional advisers or other Appointee (where applicable) on a full indemnity basis.

**Maximum Commitment Amount** means EUR 181,150,000, as may be increased from time to time upon issuance of Further Henley Series I Notes, provided that if in the opinion of NP ELM acting reasonably, there are no further suitable investment opportunities to satisfy the investment objective of NP ELM, NP ELM may designate a reduction of such Maximum Commitment Amount to the then current Aggregate Funding Amount in respect of the Henley Series I Notes.

**Minimum Denomination** means €100,000.

**Month** means calendar month.

**Mortgaged Property** means the Henley Series I Investment Notes, the Henley Series I Shares and the Proceeds Account and the other property, assets and/or rights of the Issuer which have been charged, assigned, pledged and/or otherwise made subject to the security created by the Issuer in favour of the Trustee pursuant to the Henley Series I Trust Deed to secure, inter alia, the obligations of the Issuer in relation to the Henley Series I Notes.

**Napier Funds** means any fund, special purpose vehicle or other investment vehicle in which the investments are managed by the Portfolio Adviser or the Portfolio Adviser's Affiliates.

**Napier Park Group** means the Portfolio Adviser and each of its Affiliates.

**Non-Permitted ERISA Noteholder** has the meaning set out at Condition 9.4 (*Forced Transfer*).

**Note Conditions** means the Conditions and the Investment Note Conditions.

**NP ELM** means NP Europe Loan Management I Designated Activity Company.

**NP ELM Account Amount** has the meaning specified in Clause 12.2 (c) (*NP ELM*) of the Agency Agreement.

**NP ELM Available Funds** means the NP Elm Henley Series I Available Funds and the equivalent of such NP ELM Henley Series I Available Funds in respect of each Other Series.

**NP ELM Board** means the board of directors of NP ELM.

**NP ELM Event of Default** has the meaning given to it in Investment Note Condition 11 (*Events Of Default*).

**NP ELM Distribution** means any distribution on any Programme Investment Notes in accordance with the relevant Programme Investment Note issuing and purchase agreement.

**NP ELM Payment Date** means, in the event of any NP ELM Distribution, each date specified in the Transaction Documents of the relevant series as being a payment date in respect of the relevant Programme Investment Notes

**NP ELM Henley Series I Aggregate Funding Amount** means, at any time, the aggregate outstanding principal amount of each NP ELM Henley Series I Funding Amount at such time.

**NP ELM Henley Series I Available Funds** means any amount received by NP ELM from time to time on the Henley Series I Portfolio, less:

- (a) any taxes (including tax accruals), costs, fees, expenses (including Administrative Expenses) of NP ELM and/or the Issuer and paid by, or to be paid by, NP ELM;
- (b) payments due or that may become due by NP ELM in respect of debt obligations (including pursuant to any Credit Facilities) and Hedging Liabilities;
- (c) cash (including CLO Investment Sale Proceeds) that has been applied towards, or designated for the purposes of, reinvestment, including to ensure that, at any time, over 50 per cent. of the total securitised exposures held by each Retention CLO have been contributed by NP ELM;
- (d) amounts necessary to satisfy any liquidity requirements; and
- (e) the NP ELM Henley Series I Profit Amount,

in each case as determined by NP ELM, following consultation with the Portfolio Adviser, provided however that the amounts described in paragraphs (a) to (e) above shall only be deducted from the NP ELM Henley Series I Available Funds if and to the extent the Portfolio Advisor reasonably determines that such amounts are attributable to Henley Series I and, where it determines such amounts are attributable to Henley Series I and any Other Series, the portion attributable to each Henley Series I shall be so deducted from the NP ELM Henley Series I Available Funds determined on a pro rata basis as between Henley Series I and each such Other Series.

**NP ELM Henley Series I Distribution** means any distribution on the Henley Series I Investment Notes in accordance with the NP ELM Henley Series I Investment Note Issuing and Purchase Agreement.

**NP ELM Henley Series I Funding Amount** has the meaning given to it in Investment Note Condition 4.1 (*NP ELM Henley Series I Funding Amount*).

**NP ELM Henley Series I Funding Date** means the date designated as such in the applicable NP ELM Henley Series I Funding Notice.

**NP ELM Henley Series I Funding Notice** means a notice of drawing substantially in the form set out in Schedule 4 (*NP ELM Henley Series I Funding Notice*) of the NP ELM Henley Series I Investment Note Issuing and Purchase Agreement.

**NP ELM Henley Series I Investment Note Issuing and Purchase Agreement** means the profit participating note issuing and purchasing agreement between NP ELM and the Issuer.

**NP ELM Henley Series I Maximum Available Commitment Amount** means, on any day, an amount in Euro equal to the NP ELM Henley Series I Maximum Commitment Amount as of such day less the NP ELM Henley Series I Aggregate Funding Amount as of such day.

**NP ELM Henley Series I Maximum Commitment Amount** means EUR 180,149,995, as may be increased from time to time upon issuance of Further Henley Series I Investment Notes, provided that if in the opinion of NP ELM acting reasonably, there are no further suitable investment opportunities to satisfy the investment objective of NP ELM, NP ELM may designate a reduction of such NP ELM Henley Series I Maximum Commitment Amount to the then current NP ELM Henley Series I Aggregate Funding Amount in respect of the Henley Series I Investment Notes.

**NP ELM Henley Series I Payment Date** means, in the event of any NP ELM Henley Series I Distribution, 25 January, 25 April, 25 July and 25 October in each year until and including the date on which the Henley Series I Investment Notes are repaid in full, provided that:

- (a) if any NP ELM Henley Series I Payment Date would otherwise fall on a day that is not a Business Day, it shall be postponed to the next day that is a Business Day (unless it would thereby fall in the following month, in which case it shall be brought forward to the immediately preceding Business Day); and
- (b) NP ELM may, in consultation with the Portfolio Adviser, upon 15 Business Days' notice to the Issuer and the Collateral Administrator, designate a Business Day in addition to the quarterly NP ELM Henley Series I Payment Dates specified above as being an additional NP ELM Henley Series I Payment Date.

**NP ELM Henley Series I Proceeds** means each amount received by NP ELM from time to time on the Henley Series I Portfolio, whether in the nature of principal, interest, other distributions or otherwise.

**NP ELM Henley Series I Profit Amount** means the payment on each NP ELM Henley Series I Payment Date, being an amount representing an aggregate maximum amount of €1,000 per annum (pro rated as between Henley Series I and each Other Series), to NP ELM as a fee for entering into the transaction.

**Obligor** means, in respect of a Collateral Obligation, the borrower thereunder or issuer thereof or, in either case, the guarantor thereof (as determined by NP ELM).

**Other Series** means any transaction effected pursuant to the Transaction Documents in respect of the issuance of notes by the Issuer other than the Henley Series I Notes and a portfolio of assets other than the Henley Series I Portfolio.

**Other Series Notes** means any indebtedness in respect of amounts borrowed or raised by the Issuer (other than in the form of the Henley Series I Notes) on terms similar to the Henley Series I Notes (in particular as to limited recourse and extinguishment of claims), provided that such indebtedness is not secured by any of the Mortgaged Property.

**Outstanding** means, in relation to the Henley Series I Notes, all the Henley Series I Notes issued except (a) those Henley Series I Notes which have been redeemed in full in accordance with the relevant Conditions, (b) those Henley Series I Notes in respect of which the date for redemption in accordance with the Conditions has occurred and the redemption amounts (including premium (if any) and all interest payable thereon) have been duly paid to the Trustee or to the Principal Paying Agent as provided in the Agency Agreement (and where appropriate notice to that effect has been given to the relevant Henley Series I Noteholders in accordance with the Conditions), (c) those which have become void and those in respect of which claims have become prescribed in accordance with Condition 11 (*Prescription*), and (d) those Henley Series I Notes which have been purchased and cancelled as provided in the Conditions; provided that (A) for the purposes of (1) the right to attend and vote at any meeting of the Henley Series I Noteholders, a written resolution of Henley Series I Noteholders and any direction or request by the Henley Series I Noteholders or any of them, (2) the determination of how many and which Henley Series I Notes are outstanding for the purposes of Clause 6.6(a) (*Realisation of Security*) of the Henley Series I Trust Deed, Conditions 12 (*Events of Default*) and 13 (*Enforcement*) and paragraphs 4, 7 and 9 of Schedule 2 (*Provisions for Meetings of Henley Series I Noteholders*) to the Henley Series I Trust Deed, (3) the exercise of any discretion, right, power or authority which the Trustee is required, expressly or impliedly, to exercise in or by reference to the interests of the Henley Series I Noteholders, and (4) the determination by the Trustee whether any event, circumstance, matter or thing is, in its opinion, materially prejudicial to the interests of the Henley Series I Noteholders, those Henley Series I Notes which are beneficially held by or on behalf of the Issuer and not cancelled as required by Condition 9.6 (*Cancellation*) (and until notified in writing to the contrary, the Trustee shall be entitled to assume there are no such holdings) shall not be considered as Outstanding Henley Series I Notes.

**Participation Deed** means any agreement between NP ELM and a CLO in relation to participations between the parties.

**Payment Instruction** means a payment instruction substantially in a form set out in Part 1 (*Form of Payment Instructions*) of Schedule 1 (*Forms of Instructions*) to the Agency Agreement.

**Plan Asset Regulation** means 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA, as they may be amended or modified.

**Portfolio Adviser** means Napier Park Global Capital (US) LP, which is providing advisory services to NP ELM in connection with the investment strategy described in the Private Placement Memorandum prepared in connection with the Henley Series I Notes and each private placement memorandum prepared in connection with each Other Series and which term shall include any successor portfolio adviser appointed pursuant to the terms of the Portfolio Advisory Agreement.

**Portfolio Advisory Agreement** means the portfolio advisory agreement between the Portfolio Adviser and NP ELM entered into on 1 February 2016, as amended from time to time.

**Portfolio Advisory Services** means the procuring of human capital, investment opportunity, execution and sales services by the Portfolio Adviser to NP ELM as set out in Clause 3 (*Portfolio Advisory Services*) of the Portfolio Advisory Agreement.

**Portfolio Asset** as used in Schedule 1 (*U.S. Tax Procedures*) to the Portfolio Advisory Agreement, means each Collateral Obligation acquired or committed to be acquired by NP ELM in connection with a CLO.

**Portfolio Management Team** means the personnel responsible for day-to-day management and operations of NP ELM seconded to NP ELM by the Portfolio Adviser pursuant to the resolution of the NP ELM Board.

**Portfolio Database** means the database maintained by the Collateral Administrator pursuant to the Agency Agreement and designating each asset in the Aggregate Portfolio as forming part of the Henley Series I Portfolio and/or the portfolio in respect of an Other Series.

**Portfolio Tests** means the tests agreed in writing between NP ELM and the Collateral Administrator from time to time.

**Principal Paying Agent** means Elavon Financial Services DAC and any successor thereto.

**Proceedings** has the meaning set out at Condition 17.2 (*Jurisdiction*).

**Proceeds Account** means the interest bearing account of the Issuer denominated in Euro in the name of the Issuer entitled "*Proceeds Account (Henley Series I)*" and held with the Account Bank.

**Proceeds Account Amount** has the meaning specified in Clause 12.1(c) (*Issuer*) of the Agency Agreement.

**Programme Notes** means the Henley Series I Notes and each other series of notes issued by the Issuer in respect of each Other Series.

**Programme Investment Notes** means the Henley Series I Investment Notes and each other series of investment notes issued by NP ELM and subscribed for by the Issuer in respect of each Other Series.

**Programme Master Definitions Agreement** means these master definitions and each other master definitions agreement entered into in respect of each Other Series between, among others, Napier Park Europe Loan Management Designated Activity Company and U.S. Bank Trustees Limited (in each case as amended from time to time).

**Programme Noteholders** means the holder of any Henley Series I Note and each other holder of series of notes issued by the Issuer in respect of each Other Series, in each case with a registered holding in the relevant register.

**Programme Trust Deed** means the Henley Series I Trust Deed and each other trust deed securing and constituting the relevant Programme Notes in respect of each Other Series entered into by the Issuer and the Trustee (in each case as amended from time to time).

**Proper Instructions** means written instructions or instructions given by facsimile, e-mail or other electronic means of communication or such other means as may be agreed from time to time by NP ELM and the Portfolio Adviser or the Portfolio Adviser and any Sub-Portfolio Adviser (as applicable), in respect of any of the matters referred to in the Portfolio Advisory Agreement or the Sub-Portfolio Advisory Agreement (as applicable).

**Qualified Purchaser** or **QP** means a "qualified purchaser" as described in Section 2(a)(51) and the rules thereunder for the purposes of Section 3(c)(7) of the Investment Company Act.

**Qualifying Noteholder** means a noteholder which is beneficially entitled to all amounts payable to it in respect of the Henley Series I Notes or the Henley Series I Investment Notes (as applicable) that:

- (a) is a person:
  - (i) that is, by virtue of the law of a Relevant Territory, resident for the purposes of tax in the Relevant Territory, and that is not a body corporate where interest in respect of the Henley Series I Notes or the Henley Series I Investment Notes (as applicable) is payable to that body corporate in connection with a trade or business which is carried on in Ireland by that body corporate through a branch or agency; and
  - (ii) that is, under the laws of a Relevant Territory, subject to a tax in respect of interest and any other distribution paid by the Issuer or NP ELM (as applicable) in respect of the Henley Series I Notes or the Henley Series I Investment Notes (as applicable) (without any reduction computed by reference to the amount of such interest or distribution) which corresponds to Irish income tax or Irish corporation tax and which generally applies to profits, income or gains received in that Relevant Territory by persons from sources outside that Relevant Territory; or
- (b) is a company which is incorporated in the US and taxed in the US on its worldwide income (including in respect of interest or other distributions payable on the Henley Series I Notes taxed without any reduction computed by reference to the amount of such interest or other distribution) provided that it does not acquire or hold the Henley Series I Notes or the Henley Series I Investment Notes (as applicable) in connection with a trade or business which is carried on in Ireland by it through a branch or agency; or
- (c) is a US limited liability company (LLC) where the ultimate recipients of interest paid to it are Qualifying Noteholders within paragraphs (a), (b) or (e) of this definition and the business conducted through the US LLC is so structured for market reasons and not for tax avoidance purposes, provided that such US LLC does not provide its commitment in connection with a trade or business which is carried on in Ireland by it through a branch or agency; or
- (d) is a person that is resident in Ireland for tax purposes, or that is otherwise within the charge to Irish corporation tax in respect such interest or other distribution, that is:
  - (i) a bank which is carrying on a *bona fide* banking business in Ireland for the purposes of Section 246 (3) of the TCA; or
  - (ii) a body corporate which advances money in the ordinary course of a trade which includes the lending of money where the interest on the Henley Series I Notes or the Henley Series I Investment Notes (as applicable) is taken into account in computing the trading income of

such body corporate and such body corporate has complied with the notification requirements under section 246(5) of the TCA; or

- (iii) a qualifying company (within the meaning of section 110 of the TCA); or
  - (iv) an exempt approved scheme (within the meaning of Section 774 of the TCA); or
  - (v) an investment undertaking (within the meaning of section 739B of the TCA); or
- (e) is a person that is not a Specified Person that is a pension fund, government body or other person resident in a Relevant Territory that, under the laws of that Relevant Territory, is exempted from a tax which corresponds to Irish income tax or Irish corporation tax and which generally applies to profits, income or gains in that Relevant Territory and, if that person is a body corporate, the interest or other distribution is not payable to that body corporate in respect of the Henley Series I Notes or the Henley Series I Investment Notes (as applicable) in connection with a trade or business which is carried on in Ireland by that body corporate through a branch or agency.

**Receiver** has the meaning given to it in Condition 12 (*Events of Default*).

**Record Date** means the 15th Business Day before the relevant Henley Series I Note Payment Date.

**Register** means the register of holders of the legal title to the Henley Series I Notes which the Issuer will procure is kept by the Registrar outside of the United Kingdom pursuant to the terms of the Agency Agreement.

**Registrar** means U.S. Bank National Association and any successor thereto.

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

**Relevant Date** means, in respect of any payment due in respect of any Henley Series I Note, the date on which such payment first becomes due or (if any amount of the money payable is improperly withheld or refused or the default is otherwise made in the payment thereof) the date on which payment in full of the amount outstanding is made or (if earlier) the date on which notice is duly given to the Henley Series I Noteholders in accordance with Condition 14.6 (*Notices*) that, upon further presentation of the Henley Series I Note being made in accordance with these Conditions, such payment will be made, provided that payment is in fact made upon such presentation.

**Relevant Territory** means (a) a Member State of the European Union (other than Ireland) or (b) not being such a Member State a country with which Ireland has a double tax treaty in force by virtue of Section 826(1) of the TCA or which will come into force once the procedures set out in Section 826(1) of the TCA have been completed.

**Report** means the monthly reports defined as such in the Agency Agreement which is prepared by the Collateral Administrator (in consultation with the Portfolio Adviser) on behalf of the Issuer on such dates as are set forth in the relevant Report (Series Specific Annex), which shall include information regarding the Henley Series I Portfolio in respect of the Henley Series I Notes and the relevant Aggregate Portfolio in respect of each Other Series for the relevant Programme Notes, made available via a secured website currently located at <https://usbtrustgateway.usbank.com/portal/login.do> (or such other website as may be notified in writing by the Collateral Administrator to the Issuer, NP ELM, the Portfolio Adviser, the Trustee and the relevant Programme Noteholders from time to time) which shall be accessible to the Issuer, NP ELM, the Portfolio Adviser, the Trustee and to any relevant Programme Noteholder by way of a unique password which in the case of each relevant Programme Noteholder may be obtained from the Collateral Administrator subject to receipt by the Collateral Administrator of certification that such holder is a holder of a beneficial interest in any Henley Series I Notes in respect of Reports for Henley Series I and any relevant Programme Notes in respect of Reports for such Other Series.

**Report Series Specific Annex** means each annex (each being substantially in a form set out in Schedule 3 (Form of Report Series Specific Annex) to the Agency Agreement) in respect of each relevant Report to be entered into between the Collateral Administrator and NP ELM in respect of Henley Series I and each Other Series.

**Retention CLO** means a European CLO which has been established by NP ELM in conjunction with the Collateral Manager.

**Retention Financing** means the provision of financing to Collateral Managers to purchase retention securities for a particular CLO.

**Secured Party** means each of the Trustee, any Receiver or other Appointee of the Trustee, each Henley Series I Noteholder, the Corporate Services Provider and each Agent.

**Securities** means any financial asset (other than Cash) from time to time held within the control of the Custodian for the Issuer under the terms of the Agency Agreement, including any security entitlement or similar interest or right; provided, however, that each financial asset must be (i) a security dealt in or traded on securities exchanges for which settlement normally occurs in a Clearance System, (ii) a certificated security in bearer form or registered (or to be registered) in the name of the Custodian or its sub-custodian and transferable by delivery of a certificate with endorsement to a subsequent holder or (iii) a book-entry security that is publicly offered to investors under the applicable laws (but settled outside a Clearance System) including, but not limited to an interest in an investment company where the interest is registered in the name of the Custodian or its sub-custodian. Securities do not include other financial assets or physical evidence of such other financial assets including loans, participations, contracts, subscriptions and confirmations, which the Custodian shall accept only on terms as agreed in writing by the Custodian.

**Securities Act** means the U.S. Securities Act of 1933, as amended.

**Series I Portfolio** means the portfolio of Collateral Obligations and CLO Investments held by or on behalf of NP ELM from time to time and designated in the Portfolio Database as forming part of the “*Series I Portfolio*”.

**Similar Law** means any federal, state, local or non-U.S. law that is substantially similar to the prohibited transaction provisions of Section 406 of ERISA and/or Section 4975 of the Code.

**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 Office** means, in relation to any of the Agents, either the office identified as such in the Agency Agreement or any other office approved in writing by the Trustee in relation to the Henley Series I Notes and notified to the Henley Series I Noteholders in accordance with the Conditions.

**Specified Person** means:

(a) a company which directly or indirectly:

- (i) controls the Issuer;
- (ii) is controlled by the Issuer; or
- (iii) is controlled by a third company which also directly or indirectly controls the Issuer,

where 'controls' and 'controlled' have the same meanings as they would have by the application of section 11 of the TCA; or

(b) a person, or persons who are connected with each other (within the meaning of section 10 of the TCA):

- (i) from whom assets were acquired by the Issuer;
- (ii) to whom the Issuer has made loans or advances; or
- (iii) 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 per cent. of the aggregate value of the assets of the Issuer.

**Sub-Portfolio Adviser** means the Affiliates of the Portfolio Adviser delegated as such by the Portfolio Adviser pursuant to the Portfolio Advisory Agreement and as of the Issue Date permitted Sub-Portfolio Advisers include Napier Park Global Capital Ltd and Napier Park Global Capital GmbH.

**Sub-Portfolio Advisory Agreement** means any agreement entered into between the Portfolio Adviser and any Sub-Portfolio Adviser in respect of the Portfolio Advisory Services provided under the Portfolio Advisory Agreement.

**Sub-Portfolio Advisory Services** means, as applicable, the procuring of human capital, investment opportunity, research, execution and sales services by a Sub-Portfolio Adviser to the Portfolio Adviser as set out in Clause 3 (*Sub-Portfolio Advisory Services*) in the applicable Sub-Portfolio Advisory Agreement.

**Successor** means, in relation to any of the Agents, such other or further person as may from time to time be appointed by the Issuer in accordance with the provisions of the Agency Agreement and notice of whose appointment is given to Henley Series I Noteholders in accordance with the Conditions.

**Successor Adviser** has the meaning given to it in the Portfolio Advisory Agreement.

**Successor Appointment Period** means the period from the date of notice of the Account Bank's resignation until the date falling 60 calendar days or such longer period as is set out in such notice following receipt (or deemed receipt) by the Issuer of such notice.

**TARGET2** means the Trans-European Automated Real-time Gross Settlement Express Transfer system (or, if such system ceases to be operative, such other system (if any) determined by NP ELM to be a suitable replacement).

**Taxes** means all taxes, levies, imposts, charges, assessments, deductions, withholdings and related liabilities, imposed under any Applicable Law.

**TCA** means the Taxes Consolidation Act 1997 (as amended).

**Transaction Documents** means the Henley Series I Trust Deed (including the Conditions and the Henley Series I Notes), each Henley Series I Note Issuing and Purchase Agreement, the Agency Agreement, the NP ELM Henley Series I Investment Note Issuing and Purchase Agreement (including the Investment Note Conditions and the Henley Series I Investment Notes), the Corporate Services Agreement and any other documents defined as "Transaction Documents" in any master definitions agreement between the Issuer and a trustee in respect of an Other Series.

**Transaction Parties** means NP ELM, the Portfolio Adviser, its Affiliates, the Trustee, any Agent and the Corporate Services Provider.

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

**Trustee** means, in respect of Henley Series I, U.S. Bank Trustees Limited and any successor thereto.

**U.S. Person** means a **U.S. person** as defined in Regulation S.

**UK** means the United Kingdom of Great Britain and Northern Ireland.

**Uncharged Cash Account** means any cash account in the name of the Issuer held with the Account Bank in its capacity as such, except the Proceeds Account, including the account at the date of the Private Placement Memorandum prepared in connection with the Henley Series I Notes wherein the Issuer Profit Amount is retained.

## TERMS AND CONDITIONS OF THE NOTES

*The following is the text of the terms and conditions of the Henley Series I Notes (the **Conditions**) which will be endorsed or attached on each Henley Series I Note (if applicable) and (subject to the provisions thereof) will apply to each such Henley Series I Note.*

The EUR 181,150,000 Henley Series I Notes (the **Henley Series I Notes**) are secured and constituted by a trust deed (as amended from time to time, the **Henley Series I Trust Deed**) dated on or about 29 March 2019 (the **Issue Date**) and made between, *inter alios*, Napier Park Europe Loan Management Designated Activity Company (the **Issuer**) and U.S. Bank Trustees Limited (the **Trustee**) as trustee for the holders of the Henley Series I Notes and as security trustee for the Secured Parties. Payments under the Henley Series I Notes will be made pursuant to an agency agreement (as amended from time to time, the **Agency Agreement**) dated 1 February 2016 entered into between the Issuer, NP Europe Loan Management I Designated Activity Company (**NP ELM**) the Trustee, Elavon Financial Services DAC in the capacities of principal paying agent (the **Principal Paying Agent**), account bank (the **Account Bank**), collateral administrator (the **Collateral Administrator**) and custodian (the **Custodian**) and U.S. Bank National Association in its capacity as registrar (the **Registrar**). References to **Paying Agents** shall include the Principal Paying Agent and any substitute or additional paying agents appointed in accordance with the Agency Agreement. **Agents** means the Paying Agents, the Collateral Administrator, the Account Bank, the Registrar and the Custodian or any of them and shall include such further or other person or persons as may be appointed from time to time an agent under the Agency Agreement.

Copies of the Henley Series I Trust Deed and the Agency Agreement are available for inspection during normal office hours at the specified offices of each of the Paying Agents. The Henley Series I Noteholders are deemed to have notice of, and shall be bound by, all of the provisions of the Henley Series I Trust Deed, the Agency Agreement and the applicable Henley Series I Note Issuing and Purchase Agreement.

### 1. DEFINED TERMS

All capitalised items have the meanings given to them in the master definitions agreement between the Issuer and the Trustee entered into on the Issue Date in respect of the Henley Series I Notes (the **Henley Series I Master Definitions Agreement**).

### 2. FORM, DENOMINATION AND TITLE

The Henley Series I Notes will be definitive form and shall be in certificated, fully registered form, without interest coupons, talons and principal receipts attached, in each case, in the Minimum Denomination. Each Definitive Certificate will be numbered serially with an identifying number which will be recorded in the Register which the Issuer shall procure to be kept by the Registrar.

*The Henley Series I Notes are not issuable in bearer form.*

Title to the Henley Series I Notes shall pass only by registration of transfers in the Register in accordance with the procedures set out in the Henley Series I Trust Deed. Except as ordered by a court of competent jurisdiction or as required by law, the Henley Series I Noteholder shall be deemed to be and may be treated as the absolute owner of such Henley Series I Note for the purpose of receiving payment thereof or on account thereof and for all other purposes, whether or not such Henley Series I Note shall be overdue and notwithstanding any notice of ownership, trust or any interest in writing on, or the theft or loss of, the Definitive Certificate relating to such Henley Series I Note and no person will be liable for so treating the Henley Series I Noteholder.

### **3. TRANSFER OF HENLEY SERIES I NOTES, ISSUE OF CERTIFICATES AND RECORDING OF FUNDING AMOUNTS**

#### **3.1 Transfers**

A Definitive Certificate may be transferred by depositing the Definitive Certificate, with the form of transfer on the back duly completed and signed, at the specified office of the Registrar. In the case of a transfer of part only of a holding of Henley Series I Notes represented by one Definitive Certificate, a new Definitive Certificate will be issued to the transferee in respect of the part transferred and a further new Definitive Certificate in respect of the balance of the holding not transferred will be issued to the transferor.

#### **3.2 Transfer restrictions**

The Issuer has not been and will not be registered under the Investment Company Act and the Henley Series I Notes have not been and will not be registered under the Securities Act. Consequently, the Henley Series I Notes may not be offered, sold, resold, delivered or transferred within the United States or to, or for the account or benefit of, U.S. Persons except in accordance with the Securities Act or an exemption therefrom and under circumstances which will not require the Issuer to register under the Investment Company Act.

Accordingly, Henley Series I Notes may only be re-offered, resold, delivered or transferred to persons that qualify as Eligible Investors.

Any purported transfer of the Henley Series I Notes to a purchaser who is not an Eligible Investor shall be null and void ab initio.

#### **3.3 Henley Series I Note Issuing and Purchase Agreement**

Each Henley Series I Noteholder must be a party to a Henley Series I Note Issuing and Purchase Agreement. No transfer of Henley Series I Notes shall be effective unless the transferee duly executes or accedes to a Henley Series I Note Issuing and Purchase Agreement with the Issuer.

#### **3.4 Delivery of new Definitive Certificate**

Each new Definitive Certificate to be issued upon a transfer of Henley Series I Notes will, within five business days of receipt by the Registrar of the duly completed form of transfer endorsed on the relevant Definitive Certificate, be mailed by uninsured mail at the risk of the relevant Henley Series I Noteholder to the address specified in the form of transfer. For the purposes of this Condition, **business day** shall mean a day on which banks are open for business in the city in which the specified office of the Registrar is located.

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

#### **3.5 Formalities free of charge**

Registration of transfer of Henley Series I Notes will be effected without charge by or on behalf of the Issuer or the Registrar but upon payment (or the giving of such indemnity and/or security and/or prefunding as the Issuer or the Registrar may require) in respect of any tax or other governmental charges which may be imposed in relation to such transfer.

### **3.6 Closed Periods**

No Henley Series I Noteholder may require the transfer of a Henley Series I Note to be registered during a period from and including the Record Date to and including a Henley Series I Note Payment Date.

### **3.7 Regulations**

All transfers of Henley Series I Notes and entries on the Register will be made subject to the detailed regulations concerning transfer of Henley Series I Notes set out at Schedule 5 (*Terms and Conditions of the Henley Series I Notes*) to the Henley Series I Trust Deed. The regulations may be changed by the Issuer with the prior written approval of the Trustee and the Registrar. A copy of the current regulations will be mailed (free of charge) by the Issuer to any Henley Series I Noteholder who requests one.

### **3.8 Recording of amounts due and/or paid**

Upon a Funding Amount being advanced or distribution being made, the Registrar shall update the Register by making the appropriate annotation to record such Funding Amount or distribution, as applicable. Such records shall, absent manifest error, be conclusive evidence of such amounts and the payment thereof.

## **4. STATUS**

The Henley Series I Notes are secured, limited recourse obligations of the Issuer which are secured in the manner described in Condition 7 (*Security for the Henley Series I Notes*) and recourse in respect of which is limited in the manner described in Condition 7.6 (*Shortfall After Application of Proceeds*).

The Henley Series I Notes rank *pari passu* and without any preference amongst themselves.

## **5. FUNDING IN RESPECT OF HENLEY SERIES I NOTES**

### **5.1 Funding Amount**

To the extent not previously advanced by the Henley Series I Noteholders, each Henley Series I Noteholder will, in accordance with the provisions of the relevant Henley Series I Note Issuing and Purchase Agreement and *pro rata* based on their respective Funding Share, advance to the Issuer in accordance with Condition 5.2 (*Funding Mechanics*) no later than 15:00 London time one Business Day prior to each applicable Funding Date the amount specified in the applicable Funding Notice (each such advance, a **Funding Amount**, the amount of each such Funding Amount being calculated in accordance with Condition 5.2 (*Funding Mechanics*) below). No Funding Amount shall be required to be advanced by the Henley Series I Noteholders if an Event of Default has occurred and is continuing.

### **5.2 Funding Mechanics**

Subject to the provisions of each Henley Series I Note Issuing and Purchase Agreement, on any Business Day prior to the redemption in whole of the Henley Series I Notes, the Issuer may (provided that no Event of Default has occurred and is continuing) request a Funding Amount in order to enable it to purchase further Henley Series I Investment Notes and/or Henley Series I Shares (as specified in the relevant Funding Notice) by delivering to each Henley Series I Noteholder (with a copy to the Collateral Administrator), no later than 10:00 London time on the Business Day which is no less than five Business Days prior to the Funding Date specified in such Funding Notice a duly completed irrevocable Funding Notice in the form set out in each Henley Series I Note Issuing and Purchase Agreement, specifying in respect of the proposed Funding Amount:

- (a) the proposed Funding Date;
- (b) the amount of the Funding Amount requested pursuant to such Funding Notice being equal to or less than the Maximum Commitment Amount less the Aggregate Funding Amount as at the date of the Funding Notice, provided that the Aggregate Funding Amount following the first Funding Date shall be greater than €10,000,000; and
- (c) the Aggregate Funding Amount immediately after such drawing.

Upon receipt of the Funding Notice pursuant to this Condition 5.2 (*Funding Mechanics*), the Henley Series I Noteholders shall advance or procure the advance of the relevant Funding Amount no later than 15:00 London time one Business Day prior to the relevant Funding Date to the account of the Issuer specified in the relevant Funding Notice.

The obligation of each Henley Series I Noteholder to pay Funding Amounts shall be several obligations, each Henley Series I Noteholder being required to fund based on their respective Funding Share.

## 6. APPLICATION OF PROCEEDS

### 6.1 Deposit of Available Proceeds

Subject to Condition 12 (*Events of Default*), the Account Bank shall procure the payment of all Henley Series I Distribution Proceeds and Expense Proceeds received by the Issuer into the Proceeds Account.

### 6.2 Application of Proceeds

Interest shall not accrue on the Henley Series I Notes at a stated rate. Interest amounts shall accrue on the Henley Series I Notes in respect of each Irish corporation tax period of the Issuer in an amount equal to each Henley Series I Noteholders' pro rata share of all income, profits, gains, expenses and losses of the Issuer relating to the Henley Series I Portfolio (ignoring interest on the Henley Series I Notes) calculated in accordance with, and available for, the purposes of Irish corporation tax as applicable to the Issuer less any carried forward losses so available and less the appropriate proportion of the Issuer Profit Amount for that Irish corporation tax period. Such interest shall be paid as Henley Series I Distribution Proceeds in the manner set out below.

Subject to Condition 12 (*Events of Default*), any Henley Series I Distribution Proceeds and Expense Proceeds standing to the credit of the Proceeds Account will be paid on each Henley Series I Note Payment Date as follows (the **Application of Proceeds**):

- (a) in respect of Henley Series I Distribution Proceeds, to the payment on the Henley Series I Notes *pro rata* and *pari passu* in proportion to their respective Funding Share determined as at such Henley Series I Note Payment Date; and
- (b) in respect of Expense Proceeds, in the following order of priority (in each case if and to the extent such amounts have not been paid by NP ELM on the Issuer's behalf):
  - (i) to the payment of taxes owing by the Issuer, if any (but excluding Irish corporate income tax due and owing on the Issuer Profit Amount referred to in (iv) below);
  - (ii) to the payment of accrued and unpaid fees and expenses and all other Liabilities (including, without limitation, by way of indemnity) of the Trustee or any Appointee payable pursuant to the Transaction Documents (so far as they relate to the Henley Series I Notes);
  - (iii) to the payment of Administrative Expenses of the Issuer in the order of priority set out in the definition thereof; and

(iv) to the transfer of the Issuer Profit Amount to an Uncharged Cash Account,

if and to the extent the Portfolio Advisor reasonably determines that such amounts are attributable to Henley Series I or, where it determines such amounts are attributable to Henley Series I and any Other Series, a proportion of such amounts determined on a pro rata basis as between Henley Series I and each such Other Series.

## **7. SECURITY FOR THE HENLEY SERIES I NOTES**

### **7.1 Mortgaged Property**

The Issuer will procure that the Mortgaged Property is registered in the name of the Issuer on or before the Issue Date and is subject to the security created by or pursuant to the Henley Series I Trust Deed.

### **7.2 Security**

The Issuer has, pursuant to the Henley Series I Trust Deed, created the following security interests in favour of the Trustee for and on behalf of the Secured Parties:

- (a) a first fixed charge and/or assignment by way of security of the Mortgaged Property and all of the Issuer's rights in respect of and sums derived from the Mortgaged Property (including, without limitation, any proceeds of the sale thereof);
- (b) a first fixed charge and/or assignment by way of security of (i) the Issuer's right to all sums held by the Agents to meet payments due in respect of the Henley Series I Notes and (ii) all of the Issuer's rights as against the Account Bank in respect of any sum standing to the credit of the Proceeds Account (but not, for the avoidance of doubt, any sum standing to the credit of any Uncharged Cash Account); and
- (c) an assignment by way of security of all of the Issuer's rights, title and interest under the Transaction Documents (so far as they relate to the Henley Series I Notes) and all sums derived therefrom and any sums of money received or receivable thereunder in respect of the Henley Series I Notes, other than in respect of any payment of the Issuer Profit Amount.

### **7.3 General Provisions Relating to Security**

The charges and security interests created pursuant to the Henley Series I Trust Deed are granted to the Trustee as trustee for itself and the other Secured Parties under the Henley Series I Trust Deed as continuing security (i) for the payment of all sums due to the Trustee and any Receiver or other Appointee under the Henley Series I Trust Deed and due under the Henley Series I Trust Deed, the Henley Series I Notes or the other Transaction Documents (so far as they relate to the Henley Series I Notes), (ii) for the payment of all sums payable to the Paying Agents pursuant to any provision of the Agency Agreement which requires the Issuer to reimburse (and to pay interest on the amount reimbursed as provided in the Agency Agreement) the Paying Agents for any amount paid out by the Paying Agents to the holders of Henley Series I Notes before receipt of the corresponding amount due from the Issuer, (iii) for the payment of all amounts due to the Agents pursuant to the Agency Agreement that are attributable to the Henley Series I Notes, (iv) for the payment of all amounts due to the Corporate Services Provider under the Corporate Services Agreement that are attributable to the Henley Series I Notes and (v) for the payment of all amounts due to the Henley Series I Noteholders pursuant to the Henley Series I Notes and each Henley Series I Note Issuing and Purchase Agreement.

The security constituted by or created pursuant to the Henley Series I Trust Deed shall become enforceable upon the occurrence of an Event of Default following notice of the same given by the Trustee to the Issuer pursuant to Condition 12 (*Events of Default*).

The Mortgaged Property will be held by the Issuer on and subject to the terms and conditions of the Agency Agreement and subject to the security referred to in Condition 7.2 (*Security*).

The Henley Series I Trust Deed provides that the Trustee shall not be bound or concerned to make any investigation into, or be responsible for:

- (a) the creditworthiness of the Mortgaged Property, the Account Bank, NP ELM or any other person which is a party to any Transaction Document (so far as it relates to the Henley Series I Notes) or any other agreement or document constituting or evidencing any of the Mortgaged Property; or
- (b) the validity, efficiency or enforceability of the obligations of any such person as is referred to in subparagraph (a) above or of the security constituted by or pursuant to the Henley Series I Trust Deed or any other agreement or document constituting the security for the Henley Series I Notes; or
- (c) whether the cashflows relating to the Mortgaged Property and the Henley Series I Notes are matched.

The Henley Series I Trust Deed provides that, prior to any enforcement of security over the Mortgaged Property, the Trustee will be deemed to release from the charges and security interests created by the Henley Series I Trust Deed any part of the Mortgaged Property (including any amounts held in the Proceeds Account) to the extent required, *inter alia*, to make payments to Henley Series I Noteholders in respect of principal or interest in accordance with the Henley Series I Trust Deed and these Conditions or to make payments to the Agents and the other Secured Parties pursuant to the Transaction Documents (so far as they relate to the Henley Series I Notes).

#### **7.4 Application of Proceeds of Enforcement of Security**

The Trustee shall (subject to the provisions of the Henley Series I Trust Deed) apply all amounts received by it under the provisions of the Henley Series I Trust Deed in connection with the realisation or enforcement of the security constituted by or pursuant to the Henley Series I Trust Deed, these Conditions or any other Transaction Document (so far as it relates to the Henley Series I Notes) in accordance with the Application of Proceeds.

#### **7.5 Realisation of the Mortgaged Property Relating to the Henley Series I Notes**

In the event of the security constituted by or created pursuant to the Henley Series I Trust Deed over the Mortgaged Property becoming enforceable pursuant to Condition 13 (*Enforcement*), the Trustee may at its discretion and shall:

- (i) if requested in writing by the holders of at least one-fifth in Aggregate Funding Amount of the Henley Series I Notes then Outstanding; or
- (ii) if directed by an Extraordinary Resolution of the Henley Series I Noteholders.

do (or appoint a receiver to do) one or more of the following (in each case subject to it having been indemnified and/or secured and/or prefunded to its satisfaction against any Liability, loss, claim, action, demand or expense which in its opinion may be incurred or made against it in connection therewith):

- (a) sell or otherwise realise the Mortgaged Property in accordance with Condition 13 (*Enforcement*) and the provisions of the Agency Agreement;
- (b) take other steps to realise all or some of the Mortgaged Property;
- (c) terminate and/or enforce and/or realise any agreement entered into by the Issuer in relation to the Henley Series I Notes, the rights of the Issuer in respect of which form part of the Mortgaged Property; and

(d) otherwise enforce the security constituted by or pursuant to the Henley Series I Trust Deed,

in each case without any liability as to the consequences of such action and without having regard to the effect of such action on individual Henley Series I Noteholders and provided that the Trustee shall not be required to take any action without first being indemnified and/or secured and/or prefunded to its satisfaction or to do anything which is or may be contrary to any applicable law or regulation.

The power of sale under Section 101 of the Law of Property Act 1925 (but without the restrictions imposed by Sections 93 and 103 of such Act) shall apply and have effect on the basis that the Henley Series I Trust Deed constitutes a mortgage within the meaning of that Act and the Trustee is a mortgagee exercising the power of sale conferred on mortgagees by that Act with limited title guarantee.

## **7.6 Shortfall After Application of Proceeds**

Notwithstanding any Condition or Transaction Document (so far as it relates to the Henley Series I Notes), the recourse of the Secured Parties and their Affiliates to the Issuer in relation to the Henley Series I Notes and the Transaction Documents (so far as they relate to the Henley Series I Notes) is limited to the assets that are the subject of the security constituted by the Henley Series I Trust Deed. The obligations of the Issuer in relation to the Henley Series I Notes and the Transaction Documents (so far as they relate to the Henley Series I Notes) to pay amounts due and payable in respect thereof to the Secured Parties and any of their Affiliates at any time shall be limited to the proceeds available to the Issuer at such time to make such payments in accordance with the Conditions and the Transaction Documents (so far as they relate to the Henley Series I Notes). Notwithstanding any other provisions of the Conditions or the Transaction Documents (so far as they relate to the Henley Series I Notes), if the net proceeds of realisation of the security constituted by the Henley Series I Trust Deed, upon enforcement thereof in accordance with Condition 13 (*Enforcement*) or otherwise and the provisions of the Henley Series I Trust Deed are less than the aggregate amount payable by the Issuer in respect of the Henley Series I Notes and the Transaction Documents (so far as they relate to the Henley Series I Notes), to the Secured Parties and any of their Affiliates (such negative amount being referred to herein as a **shortfall**), the obligations of the Issuer to such persons will be limited to such net proceeds, which shall be applied in accordance with the Application of Proceeds. In such circumstances, the other assets of the Issuer will not be available for payment of such shortfall. Each Secured Party's rights, and those of its Affiliates, to receive any further amounts in respect of such obligations shall be extinguished and no Secured Party, nor any Affiliate thereof, may take any further action to recover such amounts.

No Secured Party nor any of its Affiliates nor any person acting on its or their behalf, shall be entitled at any time to institute against the Issuer, or join in any institution against the Issuer of, any bankruptcy, administration, moratorium, examinership, reorganisation, arrangement, insolvency, winding up or liquidation proceedings or other proceedings under any applicable bankruptcy or similar law in connection with any obligations of the Issuer relating to the Henley Series I Notes or any Transaction Document (so far as it relates to the Henley Series I Notes), save for lodging a claim in the liquidation of the Issuer which is initiated by another non-affiliated party or taking proceedings to obtain a declaration or judgment as to the obligations of the Issuer in relation thereto.

No Secured Party, nor any Affiliate of a Secured Party, has any recourse under any obligation, covenant, or agreement of the Issuer contained in the Henley Series I Notes or a Transaction Document (so far as it relates to the Henley Series I Notes) against any shareholder, officer, agent, employee or director 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 Henley Series I Notes and the Transaction Documents (so far as it relates to the Henley Series I Notes) are corporate obligations of the Issuer. No personal liability shall attach to or be incurred by the shareholders, officers, agents, employees or directors of the Issuer, or any of them, under or by reason of any of the obligations, covenants or agreements of the Issuer contained in the Henley Series I Notes or a Transaction Document (so far as it relates to the Henley Series I Notes) or implied therefrom, and any and all personal liability of every such shareholder, officer, agent, employee or director for breaches by the Issuer of

any such obligations, covenants or agreements, either at law or by statute or constitution is deemed expressly waived by the Secured Parties on their behalves and on behalf of their Affiliates.

## **8. RESTRICTIONS**

So long as any of the Henley Series I Notes remains Outstanding, the Issuer will not, other than as permitted by the Transaction Documents (so far as they relate to the Henley Series I Notes), without the prior written consent of the Trustee:

- (a) engage in any activity or do anything whatsoever except:
  - (i) issue the Programme Notes;
  - (ii) redeem any Programme Notes in accordance with the relevant terms and conditions of such Programme Notes;
  - (iii) enter into Transaction Documents;
  - (iv) perform its obligations under and in connection with any Henley Series I Notes, any Transaction Document or other deeds or agreements incidental to the issue and constitution of, or the granting of security for, the Henley Series I Notes;
  - (v) enforce any of its rights under Transaction Documents or any other deed or agreement entered into in relation thereto;
  - (vi) perform any act incidental to or necessary in connection with any of the above or the Transaction Documents; or
  - (vii) issue, redeem, enter into relevant documentation, perform its obligations, enforce its rights and perform any act incidentally or necessary in connection with, in each case, any Other Series;
- (b) have any employees;
- (c) subject to subparagraph (a) above, dispose of any of its property or other assets or any part thereof or interest therein, including, for the avoidance of doubt, the Mortgaged Property;
- (d) issue or create any notes (other than notes in respect of any Other Series) unless the trustee thereof is the same person as the Trustee for the Henley Series I Notes and such notes are documented and constituted by an instrument in substantially the same form as the Henley Series I Trust Deed;
- (e) purchase, own, lease or otherwise acquire any real property including office premises or like facilities;
- (f) consolidate or merge with any other person or convey or transfer its properties or assets substantially or in their entirety to any person or be acquired by another entity (otherwise than as contemplated in the terms and conditions in relation to Programme Notes or any Programme Trust Deed);
- (g) issue any shares (other than such shares as are issued in connection with any Programme Notes and Programme Investment Notes);
- (h) undertake any action which would cause it to be subject to the registration requirements of the Investment Company Act;
- (i) undertake any action which would cause (i) its centre of main interests (for the purposes of the EU Insolvency Regulation (EC) No. 1346/2000 of 29 May 2000 to be in any jurisdiction other than Ireland or (ii) it to have any establishment (as defined in the Regulation) other than in Ireland;

- (j) create or permit to exist upon or affect the Mortgaged Property, any lien, encumbrance or any other security interest other than as contemplated by the Transaction Documents (so far as they relate to the Henley Series I Notes) or as may arise by operation of law;
- (k) permit the validity or effectiveness of the Henley Series I Trust Deed or priority of any security interest in the mortgaged property to be suspended, terminated, postponed or discharged or permit any person whose obligations form part of such security interest to be released from such obligations;
- (l) remove any legend from any Henley Series I Note;
- (m) the Issuer shall not make any changes to its investment policy unless 60 days' notice of such changes is given to Henley Series I Noteholders in accordance with Condition 14.6 (*Notices*) (or such other notice period as may be agreed in writing between the Issuer and the Henley Series I Noteholders) and, in the case of any proposed change to the Core Investment Strategy, the Issuer shall not make any changes unless the Henley Series I Noteholders approve such a change by way of Extraordinary Resolution; or
- (n) amend its constitution in a manner which would be materially prejudicial to the Henley Series I Noteholders except to the extent necessary to comply with applicable law in the jurisdiction of its incorporation.

## **9. REDEMPTION**

### **9.1 No fixed Maturity Date**

The Henley Series I Notes do not have a fixed maturity date. All Outstanding Henley Series I Notes will be redeemed by the Issuer and cancelled as soon as reasonably practicable after the last CLO Investment in the Henley Series I Portfolio has been repaid or sold, the last Collateral Obligation in the Henley Series I Portfolio has been repaid, redeemed or sold and the final NP ELM Henley Series I Distribution (and consequential distribution on the Henley Series I Notes) has been made.

### **9.2 Redemption on Henley Series I Note Payment Dates**

The Henley Series I Notes may be redeemed on each Henley Series I Note Payment Date upon application of Henley Series I Distribution Proceeds pursuant to the Application of Proceeds.

### **9.3 Optional Redemption**

The Henley Series I Notes shall be redeemed in whole or in part at the option of the Issuer upon not less than 5 Business Days' notice to the Henley Series I Noteholders given in accordance with Condition 14.6 (*Notices*) at any time following a redemption of the Henley Series I Investment Notes and the Henley Series I Shares. The value of the Henley Series I Notes to be redeemed in connection with this Condition 9.3 (*Optional Redemption*) shall be an amount received by the Issuer, less any applicable expenses, in respect of the Henley Series I Investment Notes or Henley Series I Shares, as applicable, being redeemed at such time.

Such notice from the Issuer shall specify the date selected for redemption of the Henley Series I Notes and shall also be delivered to the Trustee and each Agent.

### **9.4 Forced Transfer**

If the Issuer determines at any time that a person who has purchased any Henley Series I Notes (**Affected Notes**) was not an Eligible Investor, in each case at the time of acquisition of such Henley Series I Notes, the Issuer will (provided it has obtained the prior consent of NP ELM) require such holder to sell the Henley Series I Notes held by such holder within 30 calendar days after notice of the sale requirement is given. In the event the Issuer compels a sale of Henley Series I Notes, if the holder of the Henley Series I Notes fails to effect the sale within

such 30 calendar day period, the Issuer will cause such holder's Henley Series I Notes to be transferred in a commercially reasonable sale to a person approved by NP ELM that certifies in writing to the Issuer that such person is an Eligible Investor, together with the other acknowledgments, representations and agreements deemed or required to be made in writing by a transferee of Henley Series I Notes pursuant to the Securities Act and the Investment Company Act. No payments will become due or will be made in respect of the Affected Notes from and including the date notice of the sale requirement is sent to and including the date on which the Registrar records the relevant transfer in the Register. Neither the Issuer, the Portfolio Adviser, the Trustee, any Agent, their respective Affiliates nor any other party shall be liable to a Henley Series I Noteholder for any loss arising from the operation of this Condition 9.4 (*Forced Transfer*).

The Issuer may (provided it has obtained the prior consent of NP ELM) force the sale of a Henley Series I Noteholder's Henley Series I Notes in order to achieve FATCA Compliance, including Henley Series I Notes held by a Henley Series I Noteholder that fails to provide the required information or if the Issuer otherwise reasonably determines that a Henley Series I Noteholder's acquisition or holding of an interest in such a Henley Series I Note would cause the Issuer to be unable to achieve FATCA Compliance (and such sale could be for less than its then fair market value). For these purposes, the Issuer shall have the right to sell a Henley Series I Noteholder's interest in its Henley Series I Notes in its entirety notwithstanding that the sale of a portion of such an interest would permit the Issuer to achieve FATCA Compliance. If the Issuer is required to force such sale, the Issuer shall require the Henley Series I Noteholder to sell its Henley Series I Notes to a purchaser selected by the Issuer and approved by NP ELM on such terms as the Issuer may choose, subject to the transfer restrictions set out herein. Subject to the requirement of the approval of NP ELM, the Issuer may select the purchaser by soliciting one or more bids from one or more brokers or other market professionals that regularly deal in securities of the same general type as the Henley Series I Notes, and selling such Henley Series I Notes to the highest such bidder. However, the Issuer may select a purchaser by any other means determined by it in its sole discretion. Each Henley Series I Noteholder and each other person in the chain of title to the Henley Series I Notes, by its acceptance of an interest in the Henley Series I Notes agrees to cooperate with the Issuer to effect such transfers. The proceeds of such sale, net of any commissions, expenses and taxes due in connection with such sale shall be remitted to the selling Henley Series I Noteholder. The terms and conditions of any sale hereunder shall be determined in the sole discretion of the Issuer subject to the transfer restrictions set out herein, and none of the Issuer, the Portfolio Adviser, the Trustee, any Agent, their respective Affiliates nor any other party shall be liable to any person having an interest in the Henley Series I Notes sold as a result of any such sale or the exercise of such discretion. The Issuer reserves the right to require any holder of Henley Series I Notes to provide any information required under FATCA.

If any Henley Series I Noteholder is determined by the Issuer to be a Henley Series I Noteholder who has made or is deemed to have made a prohibited transaction, Benefit Plan Investor, Controlling Person or Similar Law representation that is subsequently shown to be false or misleading, or whose beneficial ownership otherwise causes a violation of the 25 per cent. limitation set out in the Plan Asset Regulation (any such Henley Series I Noteholder a **Non-Permitted ERISA Noteholder**), the Non-Permitted ERISA Noteholder may be required by the Issuer to sell or otherwise transfer its Henley Series I Notes (or its interests therein) to an eligible purchaser (selected by the Issuer) at a price to be agreed between the Issuer (exercising its sole discretion) and such eligible purchaser at the time of sale, subject to the transfer restrictions set out in the Henley Series I Trust Deed. If such Non-Permitted ERISA Holder fails to sell or transfer its Henley Series I Notes (or its interests therein) within a reasonable period, such holder may be required by the Issuer to sell such Henley Series I Notes (or its interests therein) to a purchaser selected by the Issuer on such terms as the Issuer may choose. Each Henley Series I Noteholder and each other person in the chain of title from the Henley Series I Noteholder, by its acceptance of such Henley Series I Notes (or an interest therein), agrees to cooperate with the Issuer, to the extent required to effect such transfers and recognises that any forced sale due to the Henley Series I Noteholder's lack of responsiveness will be deemed by the Issuer as authorisation by a fiduciary to cause such transfer. None of the Issuer, the Trustee and the Registrar shall be liable to any Henley Series I Noteholder having an interest in the Henley Series I Notes sold or otherwise transferred as a result of any such sale or transfer. The Issuer shall be entitled to deduct from the sale or transfer price an amount equal to all the expenses

and costs incurred and any loss suffered by the Issuer as a result of such forced transfer. The Non-Permitted ERISA Noteholder will receive the balance, if any.

## **9.5 Purchases**

The Issuer may at any time purchase Henley Series I Notes at any price in the open market or otherwise. Such Henley Series I Notes may be held, reissued, resold or, at the option of the Issuer, surrendered to the Principal Paying Agent for cancellation.

## **9.6 Cancellation**

All Henley Series I Notes which are redeemed in full will forthwith be cancelled, and accordingly may not be reissued or resold.

## **9.7 Outstanding**

Notwithstanding any other provision of these Conditions or the Henley Series I Trust Deed, all references herein and therein to the Henley Series I Notes being redeemed in full or at their Commitment Amount shall be deemed to be amended to the extent required to ensure that a minimum of EUR 1 (as applicable) principal amount of Henley Series I Notes remains Outstanding at all times and any amounts which are to be applied in redemption of each of the Henley Series I Notes pursuant hereto which are in excess of the Commitment Amount thereof minus EUR 1 shall not be applied in redemption of the Commitment Amount thereof, provided always however that such EUR 1, principal shall no longer remain Outstanding and the Henley Series I Notes shall be redeemed in full on the date on which all of the Mortgaged Property securing the Henley Series I Notes has been realised and is to be finally distributed to the Henley Series I Noteholders.

# **10. PAYMENTS**

## **10.1 Henley Series I Notes**

Distributions in respect of each Henley Series I Note will be made by transfer to the registered account of the Henley Series I Noteholder. Amounts due on any Henley Series I Note Payment Date will be paid to those holders shown on the Register no later than 17:00 London time on the Record Date.

For the purposes of this Condition 10.1 (*Henley Series I Notes*), a Henley Series I Noteholder's registered account means the account maintained by or on behalf of it with a bank that processes payments, the details of which appear on the Register by 17:00 London time on the relevant Record Date, and a Henley Series I Noteholder's registered address means its address appearing on the Register at that time.

## **10.2 Taxation, Payments Subject to Law, etc.**

All payments in respect of the Henley Series I Notes shall be made free and clear of, and without withholding or deduction for or on account of, any taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or within Ireland, or any political sub division or any authority therein or thereof or any other jurisdiction having power to tax, unless such withholding or deduction is required by law. For the avoidance of doubt, the Issuer shall not be required to gross up any payments made to Henley Series I Noteholders and shall withhold or deduct from any such payments any amounts on account of such tax where so required by law or any such relevant taxing authority or in connection with FATCA. Any such withholding or deduction shall not constitute an Event of Default.

All payments are subject in all cases (i) to any applicable fiscal or other laws, regulations and directives, but without prejudice to the provisions of 7.6 (*Shortfall After Application of Proceeds*) and (ii) to any withholding or deduction required pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to FATCA. No commission shall be charged to the Henley Series I Noteholders.

Under FATCA, the Issuer (or an authorised agent acting on behalf of the Issuer) and/or any agent or broker through which a Henley Series I Noteholder purchases its Henley Series I Notes, or any nominee or other entity through which a Henley Series I Noteholder holds its Henley Series I Notes may be required to, among other things, provide certain information about the Henley Series I Noteholders (which may include a nominee or beneficial owner of a Henley Series I Note for these purposes) to a taxing authority. The Issuer expects to require each Henley Series I Noteholder to provide certifications and identifying information about itself and certain of its owners.

### **10.3 Payment on Business Days**

Payment instructions (for value the due date or, if that is not a Business Day, for value the first following day which is a Business Day) will be initiated on the Business Day preceding the due date for payment or, in the case of a payment of amounts due otherwise than on a Henley Series I Note Payment Date, or if later, on the Business Day on which the relevant Definitive Certificate is surrendered at the specified office of a Paying Agent.

Henley Series I Noteholders will not be entitled to any payment for any delay after the due date in receiving the amount due if the due date is not a Business Day.

### **10.4 Appointments**

Subject as provided in the Agency Agreement and in the limited circumstances set out in Clause 2.3 of the Henley Series I Trust Deed, the Agents act solely as agents of the Issuer and do not assume any obligation or relationship of agency or trust for or with any Henley Series I Noteholder. The Issuer reserves the right at any time with the prior written approval of the Trustee to vary or terminate the appointment of any of the Agents and to appoint additional or other Agents, provided that the Issuer will at all times maintain (i) a Principal Paying Agent and (ii) an Account Bank. For so long as the Henley Series I Notes are listed on any stock exchange, the Issuer will maintain such other agents as may be required by the rules of such stock exchange. Notice of any such change or any change of any specified office will promptly be given by the Issuer to the Henley Series I Noteholders in accordance with Condition 14.6 (*Notices*).

Notwithstanding any Condition or the provisions of the Agency Agreement, each Agent, in the performance of its duties under the Agency Agreement and these Conditions, shall at all times be subject to the standard of care applicable to such Agent as set out in the Agency Agreement.

### **10.5 Non-Business Days**

If any date for payment in respect of any Henley Series I Note is not a Business Day in relation to that Henley Series I Note, the holder shall not be entitled to (a) payment until the next following Business Day nor (b) any interest or other sum in respect of such postponed payment.

## **11. PRESCRIPTION**

Claims against the Issuer for payment in respect of the Henley Series I Notes shall be prescribed and become void unless made within five years from the appropriate Relevant Date in respect thereof.

## **12. EVENTS OF DEFAULT**

### **12.1 Events of Default**

The Trustee, if so requested in writing by the holders of at least 51 per cent. in Aggregate Funding Amount of Henley Series I Notes then Outstanding, or if so directed by an Extraordinary Resolution of the Henley Series I Noteholders, shall (subject in each case to being indemnified and/or secured and/or prefunded to its satisfaction) give notice to the Issuer that the Henley Series I Notes are, and they shall accordingly forthwith become,

immediately due and repayable at the Aggregate Funding Amount plus any distributions due and payable pursuant to the terms hereof if any of the following events occur (each an **Event of Default**) and is continuing, and the security constituted by or created pursuant to the Henley Series I Trust Deed shall forthwith become enforceable as provided in the Henley Series I Trust Deed:

- (a) default is made in the payment of any amounts declared as due to be paid by the Issuer in respect of the Henley Series I Notes and such default continues for a period of seven Business Days or more;
- (b) the Issuer fails to perform or observe any of its other obligations under the Henley Series I Notes, the Henley Series I Trust Deed, these Conditions or any other Transaction Document (so far as it relates to the Henley Series I Notes) and such failure continues for a period of 30 calendar days (or such longer period as the Trustee may permit) following the service by the Trustee on the Issuer of notice requiring the same to be remedied (and for these purposes, a failure to perform or observe an obligation shall be deemed to be remediable notwithstanding that the failure results from not doing an act or thing by a particular time);
- (c) proceedings are initiated against the Issuer under any applicable liquidation, insolvency, bankruptcy, composition, reorganisation or other similar laws (together, **Insolvency Law**), or a receiver, administrative receiver, trustee, administrator, examiner, custodian, conservator, liquidator, curator, or other similar official appointed in connection with any Insolvency Law or a security enforcement or related proceedings (a **Receiver**) is appointed in relation to the Issuer or in relation to the whole or any substantial part (in the opinion of the Trustee) of the undertaking or assets of the Issuer and in any of the foregoing cases, except in relation to the appointment of a Receiver, is not discharged within 30 calendar days; or the Issuer is subject to, or initiates or consents to judicial proceedings relating to itself under any applicable Insolvency Law, or seeks the appointment of a Receiver, or makes a conveyance or assignment for the benefit of its creditors generally or otherwise becomes subject to any reorganisation or amalgamation (other than on terms previously approved by the Henley Series I Noteholders acting by Extraordinary Resolution);
- (d) it is or will become unlawful for the Issuer to perform or comply with any one or more of its obligations under the Henley Series I Notes; or
- (e) the Issuer or NP ELM becomes subject to registration as an investment company under the Investment Company Act.

The Trustee shall not be under any obligation to monitor or take any steps to ascertain whether or not an Event of Default has occurred or is continuing.

## 12.2 Key Person Event

In the event that Michael Micko or any replacement appointed pursuant to this Condition 12.2 (*Key Person Event*) (the **Key Person**) no longer acts in their day-to-day role in the Napier Park Group, whether as a result of termination of employment with the Napier Park Group, a reassignment of responsibilities, incapacitation or otherwise (a **Key Person Event**):

- (a) the Portfolio Adviser shall promptly notify any Henley Series I Noteholder (in accordance with Condition 14.6 (*Notices*)) that has not fully funded up to its Commitment Amount of the Key Person Event;
- (b) the Portfolio Adviser may, within 90 calendar days of a Key Person Event (or a longer period, following an extension agreed to in writing by Henley Series I Noteholders holding at least 50 per cent. of the Aggregate Funding Amount) (the **Replacement Period**), notify the Henley Series I Noteholders (in accordance with Condition 14.6 (*Notices*)) of one replacement person that it has nominated to act in the role of the Key Person; and

- (c) if Henley Series I Noteholders holding at least 50 per cent. of the Aggregate Funding Amount reject the appointment of such nominated person in writing within 30 calendar days of such nomination (the **Nomination Notice Period**), the Portfolio Adviser shall so notify the Henley Series I Noteholders and any Henley Series I Noteholder that has not fully funded in respect of its Commitment Amount may reduce its Commitment Amount up to its then current Aggregate Funding Amount (subject to a *pro rata* increase of such Aggregate Funding Amount to account for any Collateral Obligations or CLO Investments in respect of the Henley Series I Portfolio purchased but not yet settled at such date (the **Committed Investments**)) by way of written notice to the Trustee and the Issuer, following which no further Funding Amounts may be drawn from such Henley Series I Noteholder.

During the Replacement Period and the subsequent Nomination Notice Period, no Funding Amount may be requested by the Issuer from the Henley Series I Noteholders except to fund Committed Investments.

### 13. ENFORCEMENT

The Trustee may, at its discretion and without notice, institute such proceedings against the Issuer or take any other action as it may think fit to enforce the terms of the Henley Series I Trust Deed and the Henley Series I Notes or any other Transaction Documents (so far as they relate to the Henley Series I Notes) and at any time after the security has become enforceable (pursuant to Condition 7.3 (*General Provisions Relating to Security*)), to enforce the security constituted by the Henley Series I Trust Deed but it shall not be obliged to take any such proceedings, action or enforcement unless (a) in the case of enforcement of the security it shall have been so requested or directed in writing by any person entitled to make such request or give such direction pursuant to Condition 7.5 (*Realisation of the Mortgaged Property Relating to the Henley Series I Notes*) or in the case of such proceedings, or other enforcement action, it shall have been so requested in writing by the holders of at least 51 per cent. in Aggregate Funding Amount of Henley Series I Notes then Outstanding or if so directed by an Extraordinary Resolution of the Henley Series I Noteholders and (b) in each case it shall have been indemnified and/or secured and/or prefunded to its satisfaction, and provided that it shall not be obliged to take any action if it would be against any applicable law or regulation.

Only the Trustee may enforce the rights of the Henley Series I Noteholders and/or any other Secured Party against the Issuer or the Mortgaged Property and none of the Henley Series I Noteholders nor any other Secured Party (other than the Trustee) is entitled to proceed against the Issuer or the Mortgaged Property unless the Trustee, having become bound to proceed in accordance with the terms of the Henley Series I Trust Deed and these Conditions fails to do so within a reasonable period and such failure shall be continuing. Any proceeds received by a Henley Series I Noteholder or any other Secured Party pursuant to any such proceedings brought by a Henley Series I Noteholder or any other Secured Party shall be promptly paid following receipt thereof to the Trustee for application pursuant to Condition 7.4 (*Application of Proceeds of Enforcement of Security*).

The Trustee, the Henley Series I Noteholders and each other Secured Party shall have recourse only to the Mortgaged Property, and the Trustee having realised the same and distributed the net proceeds in accordance with Condition 7.4 (*Application of Proceeds of Enforcement of Security*), the Trustee, the Henley Series I Noteholders and each other Secured Party or anyone acting on behalf of any of them shall not be entitled to take any further steps against the Issuer or its other assets to recover any sums due but still unpaid in respect of the Henley Series I Notes or under these Conditions, the Henley Series I Trust Deed or in respect of any other amount owed to any Secured Party and all claims in respect of any such sum shall be extinguished. In particular, none of the Trustee, any Henley Series I Noteholder nor any other Secured Party shall be entitled to (i) institute, or join with any other person in bringing, instituting or joining, insolvency proceedings (whether court based or otherwise) in relation to the Issuer or (ii) appoint an examiner or receiver to, or otherwise procure, the winding up, administration, examinership or liquidation of, the Issuer nor shall any of them have any claim in respect of any asset of the Issuer not forming part of the Mortgaged Property.

## **14. MEETING OF HENLEY SERIES I NOTEHOLDERS; MODIFICATIONS; WAIVER; AND SUBSTITUTION**

### **14.1 Meetings of Henley Series I Noteholders**

The Henley Series I Trust Deed contains provisions for convening meetings of Henley Series I Noteholders to consider any matter affecting their interests, including modification by Extraordinary Resolution of these Conditions or the provisions of any other Transaction Document (so far as it relates to the Henley Series I Notes). The quorum at any such meeting for passing an Extraordinary Resolution will be one or more persons holding or representing not less than 66⅔% in Aggregate Funding Amount of the Henley Series I Notes for the time being Outstanding or, at any adjourned such meeting, one or more persons being or representing Henley Series I Noteholders, whatever the Aggregate Funding Amount of the Henley Series I Notes so held or represented. An Extraordinary Resolution duly passed at any such meeting shall be binding on all the Henley Series I Noteholders, whether present or not, except that any Extraordinary Resolution proposed, *inter alia*, (i) to amend the dates of maturity or redemption of the Henley Series I Notes, or any date for payment of interest thereon, (ii) to reduce or cancel the Aggregate Funding Amount of, or any premium payable on redemption of, the Henley Series I Notes, (iii) to change any method of calculating the redemption amount, (iv) to change the currency of payment or denomination of the Henley Series I Notes, (v) to modify the provisions concerning the quorum required at any meeting of Henley Series I Noteholders or the majority required to pass an Extraordinary Resolution, (vi) any modification to the Application of Proceeds, (vii) to alter the Mortgaged Property or modify any document relating to the Mortgaged Property in either case in any material respect, (viii) to modify the provisions of the Henley Series I Trust Deed or these Conditions concerning this exception or (ix) to modify any other provisions specifically identified for this purpose in the Henley Series I Trust Deed, will only be binding if passed at a meeting of the Henley Series I Noteholders, the quorum at which shall be one or more persons holding or representing not less than 66⅔% per cent. or, at any adjourned meeting, not less than 25 per cent., in Aggregate Funding Amount of the Henley Series I Notes for the time being Outstanding. A resolution in writing signed by or on behalf of the holders of not less than 66⅔% per cent. in Aggregate Funding Amount of the Henley Series I Notes for the time being Outstanding shall be as valid and effectual as an Extraordinary Resolution passed at a meeting of Henley Series I Noteholders.

### **14.2 Modification**

The Trustee may, without the consent of the Henley Series I Noteholders, agree to any modification to the Henley Series I Notes, these Conditions, any other Transaction Document (so far as it relates to the Henley Series I Notes) or any other agreement or document entered into in relation to the Henley Series I Notes (subject to the consent of the other parties thereto, except as otherwise provided therein) which (i) is (in the opinion of the Trustee) of a formal, minor or technical nature or is made to correct a manifest error or (ii) is (in the opinion of the Trustee) not materially prejudicial to the interests of the Henley Series I Noteholders.

The Trustee shall consent to any modification to the Henley Series I Notes, these Conditions, any other Transaction Document (so far as it relates to the Henley Series I Notes) or any other agreement or document entered into in relation to the Henley Series I Notes (with or without the consent of Henley Series I Noteholders or any other Secured Party but subject to the consent of the other parties thereto, except as otherwise provided therein) which (i) two Directors independent of the Napier Park Group certify to the Trustee is not materially prejudicial to the interests of the Henley Series I Noteholders, or (ii) the Issuer certifies to the Trustee (upon which certificate the Trustee may rely absolutely and without enquiry or liability) is required in order to comply with applicable law and regulation or for the Issuer to achieve FATCA Compliance or to comply with any similar regime for reporting and information exchange and upon which certificate the Trustee shall rely absolutely and without enquiry or liability, provided that the Trustee shall not be obliged to agree to any modification which, in the opinion of the Trustee, would have the effect of (A) exposing the Trustee to any liability against which it has not been indemnified and/or secured and/or pre-funded to its satisfaction or (B) adding to or increasing the obligations, liabilities or duties, or decreasing the rights, powers, authorisations, discretions, indemnities and protections, of the Trustee in respect of the Transaction Documents (so far as they relate to the Henley Series I Notes).

Any such modification shall be notified by the Issuer to the Henley Series I Noteholders as soon as practicable thereafter in accordance with Condition 14.6 (*Notices*) unless the Trustee otherwise agrees.

The Trustee shall not be responsible for any Liabilities incurred out of or in connection with any such amendment.

#### **14.3 Waiver**

The Trustee may, without the consent of the Henley Series I Noteholders and without prejudice to its rights in respect of any subsequent breach, from time to time and at any time, but only if and in so far as in its opinion the interests of the Henley Series I Noteholders shall not be materially prejudiced thereby, waive or authorise, on such terms and conditions as it shall deem expedient, any breach or proposed breach by the Issuer of any of the covenants or provisions in the Henley Series I Trust Deed, the Henley Series I Notes, these Conditions or any other Transaction Document (so far as it relates to the Henley Series I Notes) or determine that any Event of Default shall not be treated as such provided always that the Trustee shall not exercise any powers conferred on it by this Condition 14.3 (*Waiver*) in contravention of any express direction given by an Extraordinary Resolution of the Henley Series I Noteholders but no such direction shall affect any waiver, authorisation or determination previously given or made. Any such waiver, authorisation or determination shall be binding on the Henley Series I Noteholders and the other Secured Parties.

Any such waiver, authorisation or determination shall be notified by the Issuer to the Henley Series I Noteholders as soon as practicable thereafter in accordance with Condition 14.6 (*Notices*).

#### **14.4 Entitlement of the Trustee**

In connection with the exercise of its rights, powers, authorities, duties and discretions (including but not limited to those referred to in this Condition 14 (*Meeting of Henley Series I Noteholders; Modifications; Waiver; and Substitution*)) the Trustee shall have regard to the interests of the holders of the Henley Series I Notes as a class and shall not have regard to the consequences of such exercise for individual Henley Series I Noteholders and the Trustee shall not be entitled to require, nor shall any Henley Series I Noteholder be entitled to claim, from the Issuer or any other person any indemnification or payment in respect of any tax consequence of any such exercise upon individual holders of Henley Series I Notes.

#### **14.5 Replacement of Definitive Certificates**

If any Definitive Certificate is lost, stolen, mutilated, defaced or destroyed it may be replaced at the specified office of the Registrar upon payment by the claimant of such costs and expenses as may be incurred in connection with the replacement and on such terms as to evidence and indemnity as the Issuer or the Registrar may reasonably require. Mutilated or defaced Definitive Certificates must be surrendered before replacements will be issued.

#### **14.6 Notices**

All notices to the Henley Series I Noteholders will be valid if mailed to them at their respective addresses in the register of Henley Series I Noteholders maintained by the Registrar. Any notice shall be deemed to have been given on the second day after being so mailed. The Trustee shall be at liberty to sanction any other method of giving notice to the Henley Series I Noteholders.

So long as the Henley Series I Notes are listed on Euronext Dublin, notices shall be published in such manner as the rules of Euronext Dublin may require.

#### **14.7 Indemnification and Obligations of the Trustee**

The Henley Series I Trust Deed contains provisions for the indemnification of the Trustee and for its relief from responsibility including in respect of the creditworthiness of the Mortgaged Property or any obligor or guarantor in respect thereof or for the validity, sufficiency and enforceability of the security created over the Mortgaged Property. Pursuant to the Henley Series I Trust Deed, the Trustee is not obliged to take any action under the Henley Series I Trust Deed unless indemnified and/or secured and/or prefunded to its satisfaction. The Trustee and its Affiliates are entitled to enter into business transactions with the Issuer or any other Secured Party, or any of their respective subsidiary, holding or associated companies without accounting to the Henley Series I Noteholders or any other Secured Party for profit resulting therefrom.

The Trustee is exempted from liability with respect to any loss or theft or reduction in value of the Mortgaged Property and from any obligation to insure or to procure the insuring of the Mortgaged Property (or any documents evidencing, constituting or representing the same or transferring any rights or obligations thereunder). The Trustee is not responsible for supervising the performance by any other person of its obligations under any Transaction Document (so far as it relates to the Henley Series I Notes).

The Henley Series I Trust Deed provides that the Trustee will be under no obligation or duty to act on any direction of the Henley Series I Noteholders or any other Secured Party unless indemnified and/or secured and/or prefunded to its satisfaction.

Where, in the performance of such rights, powers, trusts, authorities, duties and discretions, the Trustee is required to form an opinion or have regard to the interests of any Secured Party it shall form such opinion and otherwise exercise such rights, powers, trusts, authorities, duties and discretions solely by reference to the interests of the Henley Series I Noteholders.

#### **14.8 Notifications**

- (a) The Issuer shall promptly notify the Henley Series I Noteholders in accordance with Condition 14.6 (*Notices*) of any removal or change of the Portfolio Adviser.
- (b) The Issuer shall promptly notify the Henley Series I Noteholders in accordance with Condition 14.6 (*Notices*) of:
  - (i) any lawsuits or legal proceedings in which the Issuer or NP ELM are a named party, or
  - (ii) any lawsuits or legal proceedings of which they are aware which may, in the case of this Condition 14.8(b)(ii), materially adversely affect the ability of the Issuer and/or NP ELM from performing its obligations.

#### **15. FURTHER HENLEY SERIES I NOTES AND OTHER SERIES NOTES**

- (a) The Issuer may from time to time create and issue Further Henley Series I Notes having the same terms and conditions as the Henley Series I Notes and which shall be consolidated and form a single series with the Henley Series I Notes, and the net proceeds of issuance of such Further Henley Series I Notes shall be applied by the Issuer in subscription of Further Henley Series I Investment Notes and Henley Series I Shares. Upon the issuance of Further Henley Series I Notes, the Maximum Commitment Amount shall be increased to reflect the additional Commitment Amount represented by such Further Henley Series I Notes.
- (b) In the event that Further Henley Series I Notes are issued to a Henley Series I Noteholder which is not prior to such issuance a Henley Series I Noteholder, or which increases an existing Henley Series I Noteholder's holding such that its *pro rata* share of the Commitment Amount of the Henley Series I Notes has increased, such Henley Series I Noteholder shall be required to pay on the relevant date of

such further issuance (the **Further Issuance Date**) as consideration for the subscription of such Further Henley Series I Notes the sum of:

- (i) an equalising amount equal to its *pro rata* share of the Aggregate Funding Amount prior to the Further Issuance Date (but reduced by its *pro rata* share of any distributions made to existing Henley Series I Noteholders prior to the Further Issuance Date) based on its new or increased Commitment Amount relative to the Commitment Amount of the Henley Series I Notes immediately after such Further Issuance Date such that its new or increased Commitment Amount is drawn down to the same extent as if it had been a Henley Series I Noteholder in respect of its new or increased Commitment Amount on the Issue Date; and
  - (ii) other than (i) where the relevant Henley Series I Noteholder is an employee or officer of the Portfolio Adviser or any of its Affiliates or (ii) if waived by the Portfolio Adviser, an amount (the **Adjustment Factor**) equivalent to interest on the Funding Amount drawn down on the Further Issuance Date pursuant to paragraph (i) above, at a rate of 6 per cent. per annum (calculated on the basis of a 365-day year), compounded annually on the average daily balance of such amount, which amount shall accrue from the date or dates upon which the issue price and one or more Funding Amounts would have been payable had the Further Henley Series I Notes been issued on the Issue Date through to such Further Issuance Date.
- (c) The Issuer may from time to time create and issue Other Series having similar terms and conditions as the Henley Series I Notes, but which are secured solely on property other than the Mortgaged Property in respect of the Henley Series I Notes. Holders of Other Series will have no recourse to the Mortgaged Property in respect of the Henley Series I Notes and no ability to interfere in any way with the rights of Henley Series I Noteholders in respect of the Henley Series I Notes and/or the Mortgaged Property in respect of the Henley Series I Notes.

## 16. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No rights are conferred on any person under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Henley Series I Notes, but this does not affect any right or remedy of any person which exists or is available apart from that Act.

## 17. **GOVERNING LAW AND JURISDICTION**

### 17.1 **Governing Law**

The Henley Series I Trust Deed, these Conditions, and the Henley Series I Notes (and any non-contractual obligations arising out of or in connection with any of them) are governed by, and shall be construed in accordance with, English law.

### 17.2 **Jurisdiction**

The Issuer agrees, for the benefit of the Trustee on behalf of the Henley Series I Noteholders and the other Secured Parties, that the courts of England are to have exclusive jurisdiction to settle any disputes (whether contractual or non-contractual) which may arise out of or in connection with the Henley Series I Notes and accordingly any suit, action or proceedings arising out of or in conjunction with the Henley Series I Notes (**Proceedings**) may be brought in such courts. The Issuer irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any such Proceedings in any such court and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any such Proceedings brought in the English courts shall be conclusive and binding upon it and may be enforced in the courts of any other jurisdiction.

Nothing contained in this Condition shall limit any right to take Proceedings against the Issuer in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction, whether concurrently or not.

**17.3 Other documents**

The Issuer has in the Henley Series I Trust Deed submitted to the jurisdiction of the English courts in terms substantially similar to those set out above.

**17.4 Agent for Service of Process**

The Issuer has irrevocably appointed the person specified in the Henley Series I Trust Deed as its agent for service of process, at its registered office for the time being, as its agent to receive, for it and on its behalf, service of process in any Proceedings in England.

**18. INFORMATION**

The Issuer (or the Portfolio Adviser on its behalf) shall furnish, to the extent reasonably available without material cost to the Issuer or the Portfolio Adviser any Henley Series I Noteholder such additional information as such Henley Series I Noteholder may reasonably request from time to time and upon reasonable written notice as is necessary to (a) comply with such Henley Series I Noteholder's reporting requirements; (b) complete such Henley Series I Noteholder's income tax or information returns; or (c) comply with any disclosure requirements of any governmental body, regulatory agency, official or authority having jurisdiction over such Henley Series I Noteholder. Further, the Issuer (or the Portfolio Adviser on its behalf) shall, upon the request of a Henley Series I Noteholder, provide holdings detail in respect of the Aggregate Portfolio for the period requested within 90 days after the date of such request.

## SUMMARY OF THE MATERIAL DOCUMENTS

*The following description consists of a summary of certain provisions of the material documents which does not purport to be complete and is qualified by reference to the detailed provisions of such documents.*

The Issuer and NP ELM will, on or about the Issue Date, enter, or has previously entered (in each case, as set out below), into the following material documents in connection with its business and the issue of the Henley Series I Notes.

### **A. DOCUMENTS IN RESPECT OF THE NOTES**

#### **Henley Series I Note Issuing and Purchase Agreements**

The Henley Series I Notes will be issued pursuant to Henley Series I Note Issuing and Purchasing Agreements to be entered into between the Issuer and the Henley Series I Noteholders. The Henley Series I Noteholders will subscribe for all of the Henley Series I Notes on the Issue Date pursuant to the terms and conditions of each Henley Series I Note Issuing and Purchasing Agreement.

The Henley Series I Notes are delayed-draw notes and, subject to the satisfaction of certain conditions, will require Henley Series I Noteholders to provide funding to the Issuer (up to each Henley Series I Noteholder's Commitment Amount) when requested in accordance with the Conditions and the terms of the Henley Series I Note Issuing and Purchase Agreements.

Each Henley Series I Note Issuing and Purchasing Agreement will contain covenants customarily included in loan note terms and conditions, including, but not limited to, maintenance of corporate status, payment of debts as they fall due, keeping proper books, and maintenance of the Issuer's tax residency in Ireland.

Pursuant to the Henley Series I Note Issuing and Purchase Agreements, the Henley Series I Noteholders will agree that in the event of any transfer by a Henley Series I Noteholder of all or part of its Henley Series I Notes, the transferee must accede to the Henley Series I Note Issuing and Purchase Agreement and be bound by the terms of and perform the obligations under the Henley Series I Note Issuing and Purchase Agreement as if it had been an original party to such agreement. The form of accession certificate to be executed by any transferee Henley Series I Noteholder will be contained in the Henley Series I Note Issuing and Purchase Agreement and any such transfer may only be effected subject to and in accordance with the Conditions, which provides that the Henley Series I Notes may only be transferred to a party which accedes to the Henley Series I Note Issuing and Purchase Agreement.

The Henley Series I Note Issuing and Purchase Agreement will contain standard limited recourse and non-petition provisions with respect to the Issuer.

The Henley Series I Note Issuing and Purchasing Agreements and the Henley Series I Notes will be governed by English law.

#### **Henley Series I Trust Deed**

The Issuer and the Trustee will enter into the Henley Series I Trust Deed pursuant to which the Henley Series I Notes will be secured. The security terms of the Henley Series I Trust Deed will reflect those of the Conditions.

The Henley Series I Trust Deed will specify that the Trustee is not obliged to take any action under the Henley Series I Trust Deed unless indemnified and/or secured and/or prefunded to its satisfaction.

The Issuer will pay to the Trustee remuneration in respect of its role under the Henley Series I Trust Deed at such rates as will be agreed from time to time between the Issuer and Trustee. Such remuneration will accrue

from day to day from the date of this Henley Series I Trust Deed and will be payable up to and including the date when, all the Henley Series I Notes having become due for redemption in full, the redemption amount and interest thereon to the date of redemption have been paid to the Principal Paying Agent or, as the case may be, the Trustee.

The Issuer will indemnify the Trustee and keep it indemnified against liabilities to which it may be or become subject or which may be incurred by it in the negotiation and preparation of this Henley Series I Trust Deed and the other Transaction Documents (so far as they relate to the Henley Series I Notes) and the execution or purported execution or exercise of any of its trusts, duties, rights, powers, authorities and discretions under this Henley Series I Trust Deed or any other Transaction Document (so far as it relates to the Henley Series I Notes).

The Henley Series I Trust Deed will contain standard limited recourse and non-petition provisions with respect to the Issuer and will be governed by English law.

## **B. DOCUMENTS IN RESPECT OF THE ISSUER AND NP ELM**

### **Agency Agreement**

Each of the Issuer and NP ELM have entered into the Agency Agreement with the Agents pursuant to which the Issuer and NP ELM have appointed (i) the Account Bank to act as account bank of the Issuer and NP ELM, (ii) the Principal Paying Agent to act as principal paying agent of the Issuer and NP ELM, (iii) the Registrar to act as registrar for the Issuer and NP ELM, (iv) the Collateral Administrator to act as collateral administrator for NP ELM and (v) the Custodian to act as custodian of certain of NP ELM's investments and other assets, in each case for an annual fee.

The Custodian provides custody services in respect of such of the property of NP ELM which is delivered to and accepted by the Custodian as and when such custody services may be required. Securities are held by the Custodian in custody accounts in the name of NP ELM and separately designated in the books of the Custodian as belonging to NP ELM respectively.

Pursuant to the Agency Agreement, any of the Agents may be replaced by the Issuer or NP ELM respectively giving 30 clear days' written notice to such Agent. Any Agent may also at any time resign as agent for any reason by giving at least 90 days' written notice to the Issuer and NP ELM. The Agency Agreement may be terminated without notice in certain specified circumstances including the insolvency of any party.

Pursuant to the Agency Agreement, following a request in writing from the Issuer or the Portfolio Adviser no later than five Business Days prior to a Funding Date the Account Bank shall provide the following currency exchange service in respect of Funding Amounts to be received on the Henley Series I Notes:

- (i) confirm the foreign exchange rate applicable to the Funding Amounts specified by the Issuer five Business Days prior to the Funding Date; and
- (ii) following receipt from the Issuer of the applicable Funding Amounts, provide the Issuer with such amounts exchanged to the currency requested by the Issuer on the applicable Funding Date.

To the extent that the Account Bank properly incurs any costs in connection with such currency exchange, the Account Bank shall be indemnified in accordance with the Agency Agreement.

The Issuer and NP ELM give certain market standard indemnities in favour of the Agents in respect of potential losses of such Agents in carrying on their responsibilities under the Agency Agreement.

The Issuer and NP ELM each indemnify each of the Agents against any properly incurred stamp duties (if any), losses, liabilities, costs, expenses, damages, claims, actions or demands which such Agent may incur or which may be made against such Agent, as a result of or in connection with the appointment or the exercise of or

performance of the powers, discretions, authorities and duties of such Agent under the Agency Agreement in respect of its services to the Issuer or NP ELM in connection with the Programme Notes or the Programme Investment Notes, except such as may result from its own fraud, wilful misconduct, Gross Negligence or that of its officers, employees or agents.

Furthermore, each of the Agents severally indemnifies the Issuer and/or NP ELM (as applicable) against any properly incurred loss, liability, cost, expense, claim, action or demand which the Issuer and/or NP ELM may incur or which may be made against the Issuer and/or NP ELM, as a direct result of such Agent's own fraud, wilful misconduct, Gross Negligence or that of its officers, employees or agents.

The Agency Agreement contains standard limited recourse and non-petition provisions with respect to the Issuer and NP ELM.

The Agency Agreement is governed by English law.

### **Corporate Services Agreement**

The Issuer and NP ELM have appointed the Corporate Services Provider as corporate services provider pursuant to the terms of the Corporate Services Agreement.

Pursuant to the terms of the Corporate Services Agreement, the Corporate Services Provider is required to perform various management functions on behalf of the Issuer and NP ELM, including the provision of certain clerical, reporting, accounting, administrative and other services until termination of the Corporate Services Agreement. In consideration of the foregoing, the Corporate Services Provider is entitled to receive various fees and other charges payable by the Issuer and NP ELM at rates agreed upon from time to time plus expenses.

The terms of the Corporate Services Agreement provide that any party may terminate the Corporate Services Agreement upon the occurrence of certain stated events, including any material breach by another party of its obligations under the Corporate Services Agreement which is either incapable of remedy or which is not cured within 30 days from the date on which it was notified of such breach. In addition, the Corporate Services Provider may terminate the Corporate Services Agreement at any time by giving at least 90 days' written notice to the Issuer and NP ELM, and the Issuer and NP ELM may terminate the Corporate Services Agreement at any time by giving at least 30 days' written notice to the Corporate Services Provider.

The Corporate Services Agreement contains standard limited recourse and non-petition provisions with respect to the Issuer and NP ELM.

The Corporate Services Agreement is governed by Irish law.

## **C. DOCUMENTS IN RESPECT OF NP ELM AND THE INVESTMENT NOTES**

### **Henley Series I Investment Notes**

#### *Funding Amounts*

Pursuant to the conditions of the Henley Series I Investment Notes, on any Business Day, NP ELM may (provided that no Event of Default has occurred and is continuing) request funding from the Issuer in order to enable it to purchase further Collateral Obligations and/or CLO Investments to form part of the Henley Series I Portfolio. As a result of such funding request the Issuer may in turn deliver a Funding Notice to Henley Series I Noteholders in accordance with the Conditions of the Henley Series I Notes.

### *Distributions*

In the event there are NP ELM Henley Series I Available Funds, NP ELM will make an NP ELM Henley Series I Distribution on the Henley Series I Investment Notes to the Issuer on any NP ELM Henley Series I Payment Date.

Each NP ELM Henley Series I Distribution will be calculated in accordance with applicable Irish law as the NP ELM Henley Series I Available Funds. Upon a determination of an NP ELM Henley Series I Distribution, it will be designated and paid by NP ELM to the Issuer as follows:

- (a) an amount equal to the amount which the Issuer will be required to pay on the next Henley Series I Note Payment Date in accordance with paragraph (b) of the Application of Proceeds (if and to the extent such amounts have not been paid by NP ELM on the Issuer's behalf) shall be designated as Expense Proceeds and paid to the Proceeds Account; and
- (b) the remaining portion of such NP ELM Henley Series I Distribution shall be designated as Henley Series I Distribution Proceeds and paid into the Proceeds Account.

### *Redemptions*

NP ELM may at any time redeem some or all of the Henley Series I Investment Notes if, in the opinion of NP ELM acting reasonably, there are no suitable investment opportunities to satisfy the investment objective of NP ELM. On the occurrence of such a redemption of some or all of the Henley Series I Investment Notes the Issuer shall redeem some or all of the Notes, in an amount equal to the value of the redeemed Henley Series I Investment Notes (subject to the prior payment of any applicable expenses).

### *Events of Default*

Events of default on the Henley Series I Investment Notes include default in the payment of any sum due, breach of agreement, insolvency or administration or significant court judgments. Upon the occurrence of an event of default, the Issuer together with other holders of the Henley Series I Investment Notes may elect for the Henley Series I Investment Notes to become immediately due and repayable at the Investment Note Redemption Amount, subject to certain conditions.

### *Proceeds limited to Henley Series I Portfolio*

The Henley Series I Investment Notes are limited in recourse. If the amount by which the net proceeds from payment on, and/or liquidation of, the Henley Series I Portfolio (or, in the case of CLO Investments forming part of the Henley Series I Portfolio, redemption in full of such CLO Investments) available to unsecured creditors of NP ELM are less than the aggregate amount payable by NP ELM to the Issuer (as Investment Noteholder) under the Henley Series I Investment Notes, the amount payable by NP ELM to the Issuer (as Investment Noteholder) under the Henley Series I Investment Notes will be reduced to such amount of the net proceeds from the Henley Series I Portfolio which are available to satisfy such payment obligation under the Henley Series I Investment Notes. In these circumstances, the other assets of NP ELM (including any assets designated as forming part of a portfolio in respect of an Other Series) will not be available for payment of such shortfall, and the Issuer's (as Investment Noteholder) right to receive any further amounts under the Henley Series I Investment Notes shall be extinguished and the Issuer (as Investment Noteholder) may not take any further action to recover such amounts.

### *Other Terms*

The Henley Series I Investment Notes will contain standard non-petition provisions with respect to NP ELM.

The Investment Note Conditions will be governed by English law.

## **NP ELM Issuing and Purchase Agreement**

### *Subscription of Henley Series I Investment Notes*

The Henley Series I Investment Notes will be issued pursuant to the NP ELM Henley Series I Investment Note Issuing and Purchase Agreement to be entered into between the Issuer and NP ELM. The Issuer will subscribe for all of the Henley Series I Investment Notes pursuant to the terms and conditions of the NP ELM Henley Series I Investment Note Issuing and Purchase Agreement.

### *Other Terms*

The NP ELM Henley Series I Investment Note Issuing and Purchase Agreement will contain covenants customarily included in loan note terms and conditions, including, but not limited to, maintenance of corporate status, payment of debts as they fall due, keeping proper books and maintenance of NP ELM's tax residency in Ireland.

The NP ELM Henley Series I Investment Note Issuing and Purchase Agreement will contain standard limited recourse and non-petition provisions with respect to NP ELM.

The NP ELM Henley Series I Investment Note Issuing and Purchase Agreement will be governed by English law.

## **Portfolio Advisory Agreement**

NP ELM has entered into the Portfolio Advisory Agreement with the Portfolio Adviser pursuant to which NP ELM has appointed the Portfolio Adviser to provide certain advice and assistance (including middle and back office functions), human capital and credit and market research and analysis in connection with the origination and ongoing management by NP ELM of its assets (which shall include the Henley Series I Portfolio).

Under the Portfolio Advisory Agreement, the Portfolio Adviser has agreed to the provision of certain human capital as may be necessary to enable NP ELM to conduct any matters related to the Aggregate Portfolio.

### *Delegation*

The terms and conditions of the Portfolio Advisory Agreement allow the Portfolio Adviser to delegate some or all of its functions under the Portfolio Advisory Agreement to one or more Sub-Portfolio Advisers. The Portfolio Adviser has delegated certain functions and responsibilities with respect to NP ELM to Napier UK and Napier Switzerland.

### *Representations and Indemnities*

NP ELM provides certain representations and indemnities to the Portfolio Adviser under the provisions of the Portfolio Advisory Agreement. The Portfolio Advisory Agreement may be amended at any time by agreement of NP ELM and the Portfolio Adviser.

Pursuant to the Portfolio Advisory Agreement, NP ELM indemnifies the Portfolio Adviser, any Sub-Portfolio Adviser and their associates and officers, agents, directors, direct and indirect shareholders, members, partners or employees or their respective successors or assignees (each, an **Indemnified Person**) against third party claims which any of them may be party to as a result of, or in connection with, the services performed by the Portfolio Adviser under the Portfolio Advisory Agreement, except to the extent that the same are directly attributable to the Gross Negligence, wilful default or fraud of an Indemnified Person.

In addition, an Indemnified Person will have no liability to NP ELM for any damage or loss it suffers as a result of, or in connection with, the services performed by the Portfolio Adviser under the Portfolio Advisory

Agreement, except to the extent that such damage or loss is directly attributable to the Gross Negligence, wilful default or fraud of an Indemnified Person.

#### *Termination*

The Portfolio Advisory Agreement will be automatically terminated on the earlier of:

- (a) the date on which the Portfolio has been liquidated in full and any of NP ELM's Credit Facilities have been terminated or redeemed in full; and
- (b) such other date as agreed between NP ELM and the Portfolio Adviser.

The Portfolio Advisory Agreement is terminable on at least 90 days' prior written notice given by any party and on immediate notice by a party in certain circumstances such as the winding up of another party.

The Portfolio Adviser may resign by giving notice to NP ELM, provided that a Successor Adviser is appointed that has all required authorisations and permissions required to perform the Portfolio Advisory Services under the Portfolio Advisory Agreement and that it is able to comply with the terms of the Portfolio Advisory Agreement. The Portfolio Adviser's resignation shall only take effect upon the appointment of the Successor Adviser.

#### *Fees*

Pursuant to the terms of the Portfolio Advisory Agreement, the Portfolio Adviser will not be entitled to any fees from Henley Series I.

In respect of each Other Series, if applicable, the Portfolio Advisor shall be entitled to a portfolio adviser fee and a performance fee, determined with reference to, and solely payable from the proceeds of, the portfolio in respect of such Other Series.

In addition, NP ELM shall pay the Portfolio Adviser an amount equivalent to all reasonable third party costs and expenses properly payable or incurred by the Portfolio Adviser (including, without limitation, any fees and expenses of any middle or back office service provider in relation to NP ELM and any fees or expenses in connection with any annual general meeting and/or closing dinners related to NP ELM, which may include reasonable entertainment and travel expenses) in the performance of its obligations under the Portfolio Advisory Agreement, together with any VAT arising on such costs and expenses. Such costs and expenses shall be payable from the proceeds of the Henley Series I Portfolio if and to the extent the Portfolio Advisor reasonably determines that such costs and expenses are attributable to Henley Series I and, where it determines such costs and expenses are attributable to Henley Series I and each Other Series, may be payable from the proceeds of the Henley Series I Portfolio and the portfolio in respect of each Other Series on a pro rata basis.

#### *Collateral Management*

The Portfolio Adviser (or any Affiliate thereof) shall act as collateral manager to CLOs, including Retention CLOs, from time to time.

The Portfolio Advisory Agreement contains standard limited recourse and non-petition provisions with respect to NP ELM.

The Portfolio Advisory Agreement is governed by English law.

#### **D. OTHER DOCUMENTS**

NP ELM has previously entered into, and envisions in the future entering into, a variety of contractual arrangements with the intention of giving effect to the investment strategy. Without limitation, these contractual arrangements are likely to include:

- a) The Transaction Documents in respect of any Other Series;
- b) each Credit Facility, pursuant to which NP ELM obtains leverage in order to make investments in Collateral Obligations and/or CLO Investments;
- c) treasury documentation, including, without limitation, ISDA master agreements;
- d) sale and purchase agreements (whether by way of forward sales, participation arrangements or otherwise) relating to the assets comprising the Aggregate Portfolio from time to time;
- e) contractual arrangements with the Collateral Manager in respect of their joint establishment of Retention CLOs;
- f) mandate and engagement letters with arrangers and underwriters in respect of Retention CLOs;
- g) retention undertakings and related arrangements in connection with the EU Retention Requirements in respect of Retention CLOs;
- h) documents relating to the entry into of CLO warehouses and Retention Financings; and
- i) other documents and arrangements which may be incidental to the performance by NP ELM of its business strategy.

## DESCRIPTION OF THE ISSUER

### General

The Issuer was incorporated as a designated activity company in Ireland under the Irish Companies Act 2014 (as amended) on 23 October 2015 with registration number 570563. The registered office and principal place of business of the Issuer is 2nd Floor, 1-2 Victoria Buildings, Haddington Road, Dublin 4, Ireland. The telephone number of the Issuer is +353 1 668 6152.

### Share capital

As at the date of this Private Placement Memorandum, the issued and fully paid up share capital of the Issuer consists of 1 ordinary share of €1.00 which is held by Intertrust Nominees (Ireland) Limited on charitable trust pursuant to a share trust deed dated 26 January 2016 (the **Share Trust Deed**). The rights attaching to the shares are set out in the Issuer's constitution.

### Principal Activities

The Issuer has been established as a special purpose vehicle. The principal objects of the Issuer are set forth in its constitution and permit the Issuer, among other things, to carry on the business of financing and re-financing of any assets whatsoever and in any currency, with or without security, including, without limitation, by way of debentures, loan participation notes, credit and derivative-linked securities, securitisation and collateralised debt obligations. The Issuer's investment strategy is to provide investors with exposure to a loan origination and investment company, NP ELM, and through this company to invest in various portfolios of assets comprising in aggregate the Aggregate Portfolio and to generate attractive risk-adjusted returns from this Aggregate Portfolio such portfolios.

As at 25 March 2019:

- (a) The Issuer issued an Other Series comprising EUR 94,200,000 Series I Notes (the **Series I Notes**) on 1 February 2016. The Issuer issued a further EUR 3,305,000 Series I Notes on 16 April 2016. The Issuer used the proceeds of the Series I Notes to invest in profit participating notes and class A shares issued by NP ELM designated as forming part of the portfolio in respect of the Series I Notes.
- (b) The Issuer issued an Other Series comprising EUR 114,740,000 Series II Notes (the **Series II Notes**) on 12 May 2017. The Issuer used the proceeds of the Series II Notes to invest in profit participating notes and class B shares issued by NP ELM designated as forming part of the portfolio in respect of the Series II Notes.
- (c) The Issuer issued an Other Series comprising EUR 11,500,000 Series IIb Notes (the **Series IIb Notes**) on 17 July 2017. The Issuer used the proceeds of the Series IIb Notes to invest in profit participating notes and class C shares issued by NP ELM designated as forming part of the portfolio in respect of the Series IIb Notes.
- (d) The Issuer issued an Other Series comprising EUR 63,065,000 Series III Notes (the **Series III Notes**) on 25 February 2019. The Issuer used the proceeds of the Series III Notes to invest in profit participating notes and class D shares issued by NP ELM designated as forming part of the portfolio in respect of the Series III Notes (the **Series III Portfolio**).

Audited financial statements for the Issuer for the financial period up until each of 31 December 2016 and 31 December 2017 have been filed with Euronext Dublin and are incorporated by reference and can be accessed at the following:

- [http://www.ise.ie/debt\\_documents/Annual%20Financial%20Statement\\_2146bb7a-b3de-408d-b594-2adbc4282021.pdf](http://www.ise.ie/debt_documents/Annual%20Financial%20Statement_2146bb7a-b3de-408d-b594-2adbc4282021.pdf); and
- [http://www.ise.ie/debt\\_documents/2018.04.20%20-%20Napier%20Park%20-%20Financial%20Statements%20-%2031%20Dec%202017\\_c7c86e5e-0feb-4c00-bfe9-d11d8ed59f24.pdf](http://www.ise.ie/debt_documents/2018.04.20%20-%20Napier%20Park%20-%20Financial%20Statements%20-%2031%20Dec%202017_c7c86e5e-0feb-4c00-bfe9-d11d8ed59f24.pdf).

## **Directors and Company Secretary**

The Issuer's constitution provides that the board of directors of the Issuer will consist of at least two directors.

The address of the board of directors of the Issuer is 2nd Floor, 1-2 Victoria Buildings, Haddington Road, Dublin 4, Ireland.

The directors of the Issuer as at the date of this Private Placement Memorandum are as follows:

### *Anne Flood*

Anne is a Director of Intertrust Management Ireland and Head of its Capital Markets Services business line. Anne works with clients and business partners to provide tailored corporate administration services to a wide variety of structures established by private equity funds, collateral managers, investment banks, aviation leasing companies and alternative investment funds. Anne joined Intertrust on its acquisition of Walkers Management Services in 2012, where she had been Senior Vice President having established and led its SPV Management Services business in Dublin. Previously Anne held senior roles with AIB Capital Markets in its International Financial Services division, most recently as head of its Structured Finance and Asset Finance Services team. Prior to that worked for a number of years as a financial accountant with ORIX Aviation. Anne provides non-executive directorship services to companies engaged in structured finance, aviation leasing and finance, regulated Qualifying Alternative Investment Funds, as well as a range of corporate and holding company structures. Anne is a member of the Chartered Institute of Management Accountants and holds a Bachelor of Science in Management from Trinity College, Dublin. Anne is also a member of the Institute of Directors in Ireland.

### *Paul Griffith*

Paul is a Business Unit Manager with Intertrust and is responsible for the management of a portfolio of asset finance, capital markets and private equity clients. In addition Paul provides directorship services to client companies and is involved in business development activity on behalf of Intertrust Ireland.

Prior to joining Intertrust Paul spent three years working with the Bank of New York Corporate Trust Services, where he was a VP Relationship Manager with responsibility for structured finance products, new business growth and the management of a portfolio of investment managers. Prior to BNY Mellon, Paul worked as a Fund Trader with Citco Bank Netherlands and as an Equity Execution Trader with NCB Stock Brokers for a combined total of six years.

### *Company Secretary*

The Company Secretary is Intertrust Management Ireland Limited having its registered address at 2nd Floor, 1-2 Victoria Buildings, Haddington Road, Dublin 4, Ireland.

## **Conflicts**

Other than as disclosed above in respect of the Directors' employment with Intertrust, there are no potential conflicts of interest between any duties of any of the Issuer's Directors to the Issuer, and their private interests and/or other duties.

## Summary of Expenses

The Issuer will bear its own operating costs and other expenses and, indirectly through its holding of the Henley Series I Investment Notes and the Henley Series I Shares, will bear NP ELM's operating costs and other expenses, in each case if and to the extent the Portfolio Advisor reasonably determines that such amounts are attributable to Henley Series I and, where it determines such amounts are attributable to Henley Series I and each Other Series, a proportion of such amounts determined on a pro rata basis as between Henley Series I and each Other Series. In respect of each of the Issuer and NP ELM, expenses may include, but will not be limited to, expenses relating to: (a) fees and expenses payable to the Transaction Parties, the Investment Committee and the Directors (see "*Summary of the Material Documents*"); (b) the acquisition, holding and disposition of Collateral Obligations, CLO Investments, and other assets (including, but not limited to, custodial fees and bank service fees); (c) the Credit Facilities, or other borrowing or indebtedness incurred by the Issuer and/or NP ELM; (d) external transaction, activity and operations-related legal expenses; (e) any amendments to any Transaction Documents and any other related documents; (f) research and market data (including, without limitation, Bloomberg and any connectivity hardware incorporated into the cost of obtaining such research and market data); (g) external accounting, third party valuation, auditing, and investor reporting expenses; (h) taxes; (i) insurance (including directors' and officers' insurance); and (j) any extraordinary expenses (including, but not limited to, litigation costs and/or damages and indemnification obligations.). Without limiting the foregoing, expenses will also include all other normal operating expenses incurred by the Issuer and NP ELM incidental to their day-to-day operations.

## DESCRIPTION OF NP ELM

### General

NP ELM was incorporated as a designated activity company in Ireland under the Irish Companies Act 2014 (as amended) on 23 October 2015, with registration number 570564. The registered office and principal place of business of NP ELM is 2nd Floor, 1-2 Victoria Buildings, Haddington Road, Dublin 4, Ireland. The telephone number of NP ELM is +353 1 668 6152.

### Share capital

As at 25 March 2019, the shares in NP ELM comprise:

- (a) 1 ordinary share with a nominal value of EUR1.00 held by Intertrust Nominees (Ireland) Limited;
- (b) 5 class A shares with a nominal value of EUR1.00 issued at a premium of EUR5,000,000 (in respect of all of the class A shares in aggregate) held by the Issuer;
- (c) 5 class B shares with a nominal value of EUR1.00 issued at a premium of EUR5,000,000 (in respect of all of the class B shares in aggregate) held by the Issuer;
- (d) 5 class C shares with a nominal value of EUR1.00 issued at a premium of EUR501,395 (in respect of all of the class C shares in aggregate) held by the Issuer; and
- (e) 5 class D shares with a nominal value of EUR1.00 issued at a premium of EUR1,000,000 (in respect of all of the class D shares in aggregate) held by the Issuer.

The rights attaching to the Henley Series I Shares are set out in NP ELM's constitution.

The holders of the ordinary shares in NP ELM are entitled to attend and vote at general meetings or on any resolutions of NP ELM. Any dividends payable by NP ELM will be distributed to the holders of the ordinary shares, and on the winding-up of NP ELM, NP ELM's surplus assets (if any) will be distributed among the holders of the ordinary shares (after any share capital and share premium payable).

The holders of the class A, B, C and D shares are not entitled to attend and vote at general meetings or vote on any resolutions of NP ELM, nor do they have any right to participate in NP ELM's profits or assets or to receive a dividend. The class A, B, C and D shares are not transferable and are redeemable at the option of NP ELM acting by resolution of directors in accordance with the provisions of the constitution.

### Principal Activities

The principal objects of NP ELM are set forth in its constitution and permit NP ELM, among other things, to carry on the business of financing and re-financing of any assets whatsoever and in any currency, with or without security, including, without limitation, by way of debentures, loan participation notes, credit and derivative-linked securities, securitisation and collateralised debt obligations. NP ELM will use the proceeds from the issue of the Henley Series I Investment Notes, the Henley Series I Shares and any financing it receives from any Credit Facility in accordance with its investment objective and policy (which mirrors the Issuer's investment objective and policy) to invest in Collateral Obligations and CLO Investments and depending upon the availability of appropriate market opportunities, NP ELM will also establish Retention CLOs (in conjunction with the Collateral Manager) and invest in CLO Retention Investments issued by such Retention CLOs.

It is expected that NP ELM's payment obligations on the Credit Facilities will be satisfied by, among other sources, income on the Collateral Obligations and CLO Investments, and not solely from receipts on the CLO

Retention Investments or Collateral Obligations it has committed to sell to Retention CLOs. In addition, NP ELM's share capital as well as its ability to obtain funding under the Henley Series I Investment Notes and any Credit Facilities shall be available to meet its liabilities. On that basis, although securitisation by way of sale of certain Collateral Obligations to Retention CLOs forms part of NP ELM's investment strategy, NP ELM is of the view that its sole purpose is not securitisation.

As at 25 March 2019:

- (a) NP ELM issued EUR 89,199,995 profit participating notes on 1 February 2016 and EUR 3,305,000 profit participating notes on 16 April 2016 (together, the **Series I Investment Notes**) and used the proceeds to invest in the Series I Portfolio. NP ELM has also issued class A shares and used the proceeds to invest in the Series I Portfolio. The Series I Investment Notes and the class A shares comprise the assets designated as forming the portfolio in respect of the Series I Notes.
- (b) NP ELM issued EUR 109,739,995 profit participating notes on 12 May 2017 (together, the **Series II Investment Notes**) and used the proceeds to invest in the Series II Portfolio. NP ELM has also issued class B shares and used the proceeds to invest in the Series II Portfolio. The Series II Investment Notes and the class B shares comprise the assets designated as forming the portfolio in respect of the Series II Notes.
- (c) NP ELM issued EUR 10,998,600 profit participating notes on 17 July 2017 (together, the **Series IIb Investment Notes**) and used the proceeds to invest in the Series IIb Portfolio. NP ELM has also issued class C shares and used the proceeds to invest in the Series IIb Portfolio. The Series IIb Investment Notes and the class C shares comprise the assets designated as forming the portfolio in respect of the Series IIb Notes.
- (d) NP ELM issued EUR 62,064,995 profit participating notes on 25 February 2019 (together, the **Series III Investment Notes**) and used the proceeds to invest in the Series III Portfolio. NP ELM has also issued class D shares and used the proceeds to invest in the Series III Portfolio. The Series III Investment Notes and the class D shares comprise the assets designated as forming the portfolio in respect of the Series III Notes.

Audited financial statements for NP ELM for the financial period up until each of 31 December 2016 and 31 December 2017 have been filed with Euronext Dublin and are incorporated by reference and can be accessed at the following:

- [http://www.ise.ie/debt\\_documents/NPELM%20-%20FINAL%202016%20FS%20\(IFRS%20only\)%20signed%20\(bw\)\\_7070a8d2-1564-4971-9e4a-6a442dd78267.pdf](http://www.ise.ie/debt_documents/NPELM%20-%20FINAL%202016%20FS%20(IFRS%20only)%20signed%20(bw)_7070a8d2-1564-4971-9e4a-6a442dd78267.pdf); and
- [http://www.ise.ie/debt\\_documents/2018.04.20%20-%20NP%20Europe%20-%20Financial%20Statements%20-%2031%20Dec%202017\\_d1d54672-1ac4-4fed-a0cc-65f36d5878d5.PDF](http://www.ise.ie/debt_documents/2018.04.20%20-%20NP%20Europe%20-%20Financial%20Statements%20-%2031%20Dec%202017_d1d54672-1ac4-4fed-a0cc-65f36d5878d5.PDF).

## Conflicts

Other than as disclosed below in respect of certain members of the NP ELM Boards' employment with Intertrust there are no potential conflicts of interest between any duties of the members the NP ELM Board to NP ELM, and their private interests and/or other duties.

## Corporate Governance and Management

NP ELM is "self-managed". While NP ELM shall have the support of a number of service providers, including the Portfolio Adviser, purchase and sale decisions will be made by NP ELM on a case by case basis in a manner which seeks to meet NP ELM's business and investment strategies for the benefit of its investors.

The management structure of NP ELM consists of the following:

(a) *Board of Directors*

NP ELM's constitution provides that the NP ELM Board consists of at least of three individuals. At least half of the directors of NP ELM must be resident in Ireland for taxation purposes and if, for whatever reason, a resident director ceases to be resident in Ireland for taxation purposes, he or she shall immediately notify NP ELM and the other directors in writing.

The address of the NP ELM Board is 2nd Floor, 1-2 Victoria Buildings, Haddington Road, Dublin 4, Ireland.

The NP ELM Board has been appointed in a non-executive capacity. The NP ELM Board has delegated the day-to-day management and operations of NP ELM to the Portfolio Management Team (see under (c) below) and the Investment Committee (see under (d) below). The role of the NP ELM Board is to review the performance of the Portfolio Management Team and the Investment Committee in executing NP ELM's investment strategy.

As at the date of this Private Placement Memorandum, the directors of NP ELM are as follows:

*Anne Flood;* and

*Paul Griffith,*

each of 2nd Floor, 1-2 Victoria Buildings, Haddington Road, Dublin 4, Ireland and each of whom are further described in the section entitled "*Description of the Issuer*"; and

*Jonathan Dorfman*

Jonathan Dorfman is a Senior Managing Partner and CIO of Napier Park Global Capital (**Napier Park**) whose business address is Napier Park Global Capital (US) LP, 280 Park Avenue, 3rd Floor, New York, NY 10017, United States. Napier Park separated from Citigroup's alternative investment arm, Citi Capital Advisors (**CCA**), in February 2013. Mr. Dorfman was previously Co-CEO and CIO of CCA. He was a co-founder of Carlton Hill Global Capital (**CHGC**), a specialized asset management firm that was acquired by Citi in 2007. Prior to establishing CHGC in 2005, Mr. Dorfman spent 20 years at Morgan Stanley in the Fixed Income Division. He worked in Tokyo and London for 17 years and served as a Managing Director for 8 years. While at Morgan Stanley, Mr. Dorfman held numerous senior management positions including Global Risk Manager (Principal Risk Taking) – Global Corporate Credit Group, Co-Head of the Global Investment Grade Credit Group, Head of Global Credit Derivative and Asset Swap Trading, and Head of European Credit Derivative and Asset Swap trading. Mr. Dorfman spent the first 10 years of his career at Morgan Stanley as a member of the Global Derivative Products Group. Among the innovators and early risk takers in the credit default swap, credit index (Tracers and CDX) and tranching risk credit markets, Mr. Dorfman served as an ISDA committee member responsible for the first standardized credit default swap contract. Mr. Dorfman earned a BSE degree, magna cum laude, from the Wharton School of Business at the University of Pennsylvania in 1984; and

*Michael Micko*

Michael Micko is Head of the multi-award winning European credit strategies group at Napier Park Global Capital and the sole managing director (*gérant*) of Napier Park Global Capital GmbH. His business address is Bahnhofstrasse 1, 8808 Pfaffikon, Switzerland. Mr. Micko brings 23 years of relevant experience and joined CCA, the predecessor of Napier Park, in 2004. Prior to that he headed high yield strategy at Mellon Newton Investment Management. Previously, Mr. Micko was an investment banker in London at Deutsche Bank and Bankers Trust International focusing on Leverage Finance, and he also held the role as Treasurer of a listed corporate high yield issuer. He has a MBA from The Richard Ivey School, Canada (1991), has attended London Business School, and holds ME (Industrial Engineering) (1988) and BS (Electrical Engineering) (1987) degrees from the University of Alberta, Canada.

(b) *Company Secretary*

The Company Secretary of NP ELM is Intertrust Management Ireland Limited having its registered address at 2nd Floor, 1-2 Victoria Buildings, Haddington Road, Dublin 4, Ireland.

(c) *Portfolio Management Team*

The Portfolio Management Team of NP ELM will consist of secondees from the Portfolio Adviser working directly for NP ELM by way of personnel arrangements pursuant to the Portfolio Advisory Agreement. The Portfolio Management Team has been appointed by way of secondment-type arrangements, so as to not impose employment-related liabilities on NP ELM. The Portfolio Management Team will be responsible for, among other things:

- (i) the day-to-day management and operations of NP ELM;
- (ii) researching and presenting investment and hedging proposals for consideration by the Investment Committee and the NP ELM Board; and
- (iii) following approval of any such investment and/or hedging proposals in accordance with the Investment Committee Rules, negotiating and executing the required documents to purchase or sell Collateral Obligations or CLO Investments or enter into hedges within the parameters provided by the Investment Committee pursuant to the Investment Committee Rules.

(d) *Investment Committee*

NP ELM's Investment Committee was established by the NP ELM Board in order to consider and approve investment and hedging proposals from the Portfolio Management Team. Decisions of the Investment Committee must be made by a clear majority of Investment Committee Members, provided that the Committee Chairman has voted in favour of the relevant decision. As at the date of this Private Placement Memorandum, the Investment Committee consists of Gerry Grimes, as the Committee Chairman and certain members of the Portfolio Management Team. The Investment Committee may invite representatives of the NP ELM Board and representatives of the Portfolio Adviser to attend its meetings.

The duties of the Investment Committee are:

- (a) to receive, consider and, if it deems appropriate, approve investment and/or hedging proposals, including any related financing made by the Portfolio Management Team, subject to paragraph (d) below;
- (b) to have overall responsibility for oversight of portfolio management and credit decisions;

- (c) to review periodically its own performance, and review annually its constitution and the Investment Committee Rules, to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the NP ELM Board for approval; and
- (d) to approve the establishment of Retention CLOs.

Any decisions related to the following are required to be approved by the Investment Committee in accordance with the Investment Committee Rules:

- (i) purchase or sale of an Aggregate Portfolio asset or entry into hedges by NP ELM (including considering and approving investment and hedging proposals made by the Portfolio Management Team); and
- (ii) significant waiver, amendment or restructuring of an Aggregate Portfolio asset which would have the effect of altering the amount of principal or interest payable on such Aggregate Portfolio asset,

provided that any decisions related to the following cannot be made by the Investment Committee and must be referred to the NP ELM Board:

- (i) issuances, buy-backs and declaration of dividends/distributions on the Henley Series I Shares and/or Henley Series I Investment Notes;
- (ii) entry into any Credit Facility;
- (iii) adoption of, and changes to, the investment strategy of NP ELM and associated risk parameters;
- (iv) changes to the Investment Committee Rules;
- (v) removal or replacement of the Portfolio Advisers or appointment of other service providers;
- (vi) other decisions reserved to senior management of NP ELM under the programme of activities adopted by NP ELM in order to ensure that NP ELM is and remains an internally-managed entity.

(e) *Biography of the Investment Committee Chairman*

*Gerry Grimes*

Gerry Grimes has over 30 years investment management and banking experience. Mr. Grimes previously worked in the Central Bank of Ireland in a number of senior investment positions, including Head of Reserve Management. He was a founder and Managing Director of Allied Irish Capital Management Ltd, where he managed a group of investment professionals with c USD 1.4 bn under management, across a range of asset classes.

Mr. Grimes is an independent director of investment funds/special purpose vehicles and also lectures in Risk Management at University College Cork. He holds a First Class Honours Degree in Economics and History from University College Dublin and the Diploma for Non Executive Directors from the Financial Times/Pearson. He is a past Deputy President of AIMA, the leading representative body for the global alternative asset management industry.

### **Summary of Expenses**

See the section titled "*Description of the Issuer*" – "*Summary of Expenses*" in respect of expenses of NP ELM and the Issuer.

## INVESTMENT STRATEGY

### 1. INTRODUCTION

The Issuer's core investment strategy (the **Core Investment Strategy**) is to invest, through NP ELM, in Collateral Obligations and CLO Investments. As part of this strategy, it is expected that NP ELM will periodically establish Retention CLOs and securitise Collateral Obligations into the Retention CLOs and invest in CLO Retention Investments of the applicable Retention CLO. In addition to the Collateral Obligations sold to them by NP ELM, the Retention CLOs will also purchase other senior secured loans, credit assets and eligible assets from the market. During the relevant Retention CLO's reinvestment period, over 50 per cent. of the total securitised exposures comprising any Retention CLO will comprise assets sold to it by NP ELM (such percentage calculated including the principal proceeds received by the relevant CLO in respect of any NP ELM sourced assets). The Retention CLOs will be managed by various Collateral Managers.

Although the Portfolio Adviser will provide assistance to NP ELM, NP ELM will be self-managed, and all investment decisions will ultimately be taken by the NP ELM Board or the Investment Committee on its behalf.

#### Investment Limits and Risk Diversification

The following limits (the **Eligibility Criteria**) must be satisfied for each Collateral Obligation acquired by NP ELM at the time of entering into a binding commitment to acquire such obligation:

- (a) an exclusion of project finance loans;
- (b) an exclusion of structured finance securities (other than Collateral Obligations and CLO Investments);
- (c) an exclusion on investing in the debt of companies domiciled in countries with a local currency sub-investment grade rating; and
- (d) an exclusion of leases; and
- (e) it does not derive its value, or the greater part of its value, from Irish land.

Furthermore, the following percentage limitations (the **Percentage Limitations**) will apply to Collateral Obligations in the Henley Series I Portfolio, excluding any CLO warehouse facilities, Retention Financing and CLO securities:

	<i>Percentage of Gross Asset Value</i>
Per Obligor	15%
Per industry sector	50%

For the purposes of these Percentage Limitations **Gross Asset Value** shall mean the sum of the Maximum Commitment Amount and any undrawn commitment amount of any gearing under any Credit Facility if and to the extent the Portfolio Advisor reasonably determines that such amounts are attributable to Henley Series I or, where it determines such amounts are attributable to Henley Series I and any Other Series, a proportion of such amounts determined on a pro rata basis as between Henley Series I and each such Other Series.

For the avoidance of doubt, the Percentage Limitations shall apply on a trade date basis.

Each of the Percentage Limitations must be satisfied at the point at which NP ELM has entered into a binding commitment to acquire any Collateral Obligation in respect of the Henley Series I Portfolio, and there will be no requirement to sell such investment in the event the limits are breached at any subsequent point (for instance, as a result of movement in the Gross Asset Value, or the sale of any assets held by NP ELM in respect of the Henley Series I Portfolio).

### ***CLOs***

Each CLO in which NP ELM invests will have its own eligibility criteria and portfolio limits. These limits are designed to ensure the portfolio of assets within the CLO meets a prescribed level of diversity and quality as set by the relevant rating agencies rating securities issued by such CLO. The eligibility criteria and portfolio limits within a CLO will typically include the following:

- (a) a limit on the weighted average life of the portfolio;
- (b) a limit on the weighted average rating of the portfolio;
- (c) a limit on the maximum amount of portfolio assets with a rating lower than B-/B3/B-;
- (d) a limit on the minimum diversity of the portfolio;
- (e) a limit on the minimum weighted average of the prescribed rating agency recovery rate;
- (f) a limit on the minimum amount of senior secured assets;
- (g) a limit on the maximum aggregate exposure to second lien loans, high yield bonds, mezzanine loans and unsecured loans;
- (h) a limit on the maximum portfolio exposure to covenant-lite loans;
- (i) an exclusion of project finance loans;
- (j) an exclusion of structured finance securities;
- (k) an exclusion on investing in the debt of companies domiciled in countries with a local currency sub-investment grade rating; and
- (l) an exclusion of leases.

This is not an exhaustive list of the eligibility criteria and portfolio limits within a typical CLO and the inclusion or exclusion of such limits and their absolute levels are subject to change depending on market conditions. Any such limits applied shall be measured at the time of investment in each CLO. For an indication of the type of limits and further eligibility criteria that are expected to apply to the Aggregate Portfolio and investment in CLOs, see "*Expected Principal Conditions and Criteria of the Portfolio*".

### **Changes to Investment Policy**

The investment policy of the Issuer mirrors the investment policy of NP ELM. The Issuer will receive periodic reports from NP ELM in relation to the implementation of NP ELM's investment policy to enable the Issuer to have oversight of its activities. If NP ELM proposes to make any changes (material or otherwise) to its investment policy, the NP ELM Board must consult with the Portfolio Adviser and give 60 calendar days' notice of such changes to the Issuer (or other such notice period as may be agreed between NP ELM and the Issuer).

If the Issuer proposes to make any changes to its investment policy, it must give 60 calendar days' notice of such changes to the Henley Series I Noteholders (or other such notice period as may be agreed between the Issuer and the Henley Series I Noteholders) and, in the case of any proposed change to the Core Investment Strategy, such change will require the approval of the Henley Series I Noteholders by way of Extraordinary Resolution.

### **Investment strategy**

Whilst the intention is to pursue an active, non-benchmark total return strategy, the Issuer will be cognisant of the positioning of the Aggregate Portfolio, including the Henley Series I Portfolio, against relevant indices. In-depth, fundamental credit research dictates name selection and sector over-weights/under-weights relative to the benchmark, backstopped by constant portfolio monitoring and risk oversight. NP ELM will typically look to diversify its Aggregate Portfolio, including the Henley Series I Portfolio, to avoid the risk that any one obligor or industry will adversely impact overall returns. NP ELM also places an emphasis on liquidity to ensure that if its credit outlook changes, it is free to respond quickly and effectively to reduce or mitigate risk in the Aggregate Portfolio, including the Henley Series I Portfolio. NP ELM believes this investment strategy will be successful in the future as a result of its emphasis on risk management, capital preservation and fundamental credit research.

### **Leverage and Borrowing**

The Issuer will not utilise borrowings for investment purposes. However, the directors will be permitted to borrow up to €500,000 for day to day administration and cash management purposes. The Issuer and NP ELM may use hedging or derivatives (both long and short) for the purposes of efficient portfolio management. It is expected that NP ELM will have access to a Credit Facility and that Collateral Obligations purchased using such borrowings will typically be held until a Retention CLO is established and to provide for on-going risk retention compliance. Except in relation to the portion of CLO Retention Investments required to be held by NP ELM to comply with the EU Retention Requirements, NP ELM may enter into hedging and derivatives transactions pursuant to its investment activities, for the purposes of efficient portfolio management.

NP ELM will have the ability to enter into new and independent funding arrangements from time to time, including similar issuances of notes to investors on a secured or unsecured basis. For further detail see the section entitled "*Risk Factors – The use of leverage, external financing and hedging by NP ELM may increase the volatility of returns and providers of leverage, financing and hedging would rank ahead of investors in NP ELM in the event of insolvency*".

### **Derivatives Use**

NP ELM may engage in various transactions in derivatives either as hedges of its investment portfolio or as individual investments. In addition, NP ELM may use derivatives as a substitute for actual positions.

NP ELM will generally seek to hedge, in whole or in part, the currency exposure resulting from:

- (a) the purchase of Collateral Obligations denominated in a currency other than Euro; and
- (b) cash flows in respect of Collateral Obligations.

in each case through spot, forward, option or swap transactions in situations where it considers it both possible and economic to do so.

To the extent any payments fall due in respect of paragraphs (a) and (b) above, such amounts will be deducted from the funds available to NP ELM (as set out in the definition of NP ELM Henley Series I Available Funds), including in respect of any collateral provided on such hedges.

For further detail see the section entitled "*Risk Factors – The use of leverage, external financing and hedging by NP ELM may increase the volatility of returns and providers of leverage, financing and hedging would rank ahead of investors in NP ELM in the event of insolvency*".

#### **Retention CLO Fee Rebates**

The Portfolio Adviser or any Affiliate thereof shall act as collateral manager to CLOs, including Retention CLOs, from time to time. Each such Retention CLO will rebate to NP ELM a *pro rata* share, based on the proportion of the subordinated tranche securities represented by NP ELM's CLO Retention Investment, of 20 per cent. of the senior management fee received by the Portfolio Advisor (or any Affiliate thereof) acting as collateral manager. For the avoidance of doubt, the senior management fee with respect to the relevant Retention CLO will exclude any incentive/performance fee received by such collateral manager.

#### **Jurisdiction of Aggregate Portfolio Assets**

The Issuer does not intend to invest directly in any instruments except for profit participating notes (including the Henley Series I Investment Notes) and shares (including the Henley Series I Shares) issued by NP ELM from time to time. NP ELM intends to invest predominantly in Collateral Obligations in Europe, although it will have the ability to acquire Collateral Obligations elsewhere (including the United States).

#### **Maturity of Henley Series I Investment Notes**

The Issuer will subscribe for the Henley Series I Investment Notes and acquire the Henley Series I Shares (which shall be non-transferable). The Henley Series I Investment Notes will be repayable as soon as reasonably practicable after the last Collateral Obligation and CLO Investment in the Henley Series I Portfolio is repaid or sold, subject to the availability of funds. The Issuer's investment in the Henley Series I Shares will be repaid on the termination of the Issuer's investment in NP ELM, again subject to the availability of funds.

#### **NP ELM Investments**

The Issuer's investment strategy is to provide investors with exposure to a loan origination and investment company, NP ELM, and through this company to invest in various portfolios of assets comprising in aggregate the Aggregate Portfolio and to generate attractive risk-adjusted returns from such portfolios.

NP ELM's strategy is intended to be achieved by way of a long term investment strategy in the Collateral Obligations and CLO Investments. As part of this strategy, NP ELM intends to utilise the CLO market as a means of leveraging its investment in a portion of the Collateral Obligations. As soon as is reasonably practical and on the availability of appropriate market opportunities, NP ELM intends to establish new Retention CLOs (in conjunction with the Collateral Manager) and sell certain Collateral Obligations to such Retention CLOs. NP ELM will then subscribe for CLO Retention Investments (being the most subordinated tranche of debt issued by a CLO), and ensure that it retains at all times the requisite CLO Retention Investments in order to satisfy the EU Retention Requirements. NP ELM will also sell Collateral Obligations to Retention CLOs from time to time during the Retention CLOs reinvestment periods so as to ensure that over 50 per cent. of the total securitised exposures held by the Retention CLOs at all times have been purchased from NP ELM.

Collateral Obligations which are not sold to Retention CLOs are intended to be held by NP ELM until maturity, but may be sold prior to maturity based on NP ELM's assessment and management of the credit, market value and liquidity risk of the Aggregate Portfolio from time to time and in accordance with NP ELM's investment strategy.

NP ELM intends to invest predominantly in Collateral Obligations of primarily European obligors, although it will have the ability to acquire Collateral Obligations elsewhere (including the United States).

#### **Method of Origination and Principal Lending Criteria**

The Issuer's investment policy is to provide investors with exposure to a loan origination and investment company, NP ELM, and NP ELM's investment strategy as set out at "*NP ELM Investments*" above.

The principal lending criteria for the relevant portfolio of collateral obligations in respect of each CLO Investment will vary, but in each case will typically include the non-exhaustive lists of eligibility criteria, portfolio limits and certain other criteria set out in "*Investment Limits and Risk Diversification of CLOs*" above.

#### **Expected Principal Conditions and Criteria of the Aggregate Portfolio**

The Collateral Obligations acquired from time to time by NP ELM for the Aggregate Portfolio, and the further assets acquired by CLOs in respect of CLO Investments, will be subject to conditions determined by market conditions and negotiations in respect of the applicable CLO. With respect to all Collateral Obligations and CLO Investments purchased by NP ELM it is expected that the following conditions will, as determined by NP ELM in its reasonable discretion, be required to be satisfied:

- (a) it is an obligation in respect of which, following acquisition thereof by NP ELM by the selected method of transfer, payments to NP ELM will not be subject to withholding tax imposed by any jurisdiction unless the obligor is required to make "gross-up" payments to NP ELM that cover the full amount of any such withholding on an after-tax basis;
- (b) it does not require NP ELM or the Retention CLO to be registered as an investment company under the U.S. Investment Company Act 1940, as amended;
- (c) its acquisition by NP ELM does not result in the imposition of stamp duty or stamp duty reserve tax payable by NP ELM, unless such stamp duty or stamp duty reserve tax has been included in the purchase price of such asset;
- (d) it has not been called for, and is not subject to a pending, redemption;
- (e) it is capable of being sold, assigned or participated to NP ELM, together with any associated security, without any breach of applicable selling restrictions or of any contractual provisions or of any legal or regulatory requirements and NP ELM does not require any authorisations, consents, approvals or filings (other than such as have been obtained or effected) as a result of or in connection with any such sale, assignment or participation under any applicable law;
- (f) it is in registered form for U.S. federal income tax purposes, unless it is not a "registration-required obligation" as defined in Section 163(f) of the U.S. Internal Revenue Code; and
- (g) it is a "qualifying asset" for the purposes of section 110 of the TCA and does not derive its value, or the greater part of its value, from Irish land.

## REPORTS

### Reports

The Collateral Administrator, not later than the 15th Business Day of each month, commencing in the month which is the later of (i) March 2019 or (ii) 2 months after the Issue Date, on behalf of NP ELM and in consultation with the Portfolio Adviser, shall compile a monthly Report in respect of Henley Series I pursuant to the terms of Clause 16 (Reports) of the Agency Agreement.

Each Report shall contain the following information:

#### *Collateral Obligations*

- (a) subject to any confidentiality obligations binding on NP ELM, in respect of each Collateral Obligation forming part of the Henley Series I Portfolio, its principal balance (which for the avoidance of doubt shall be the notional amount outstanding without taking into account any applicable haircuts or discounts and if such Collateral Obligation is a delayed draw Collateral Obligation, its drawn and undrawn commitments) LoanX ID, CUSIP number, ISIN or identification thereof, annual interest rate or spread (and EURIBOR floor if any), its facility name, its maturity, obligor name, the domicile of such borrower, currency and any borrower rating of Standard & Poor's, Fitch or Moody's (other than any confidential credit estimate); and
- (b) subject to any confidentiality obligations binding on NP ELM, the purchase or sale price of each Collateral Obligation forming part of the Henley Series I Portfolio acquired by NP ELM and each Collateral Obligation forming part of the Henley Series I Portfolio sold by NP ELM since the date of determination of the last Report and the identity of the purchasers or sellers thereof, if any, that are Affiliated with NP ELM, as notified by NP ELM to the Collateral Administrator.

#### *CLO Investments*

- (a) the ISIN in respect of each such CLO Investment forming part of the Henley Series I Portfolio; and
- (b) the notional amount of each such CLO Investment forming part of the Henley Series I Portfolio.

#### *Accounts*

- (a) the balances standing to the credit of the Proceeds Account.

#### *Administrative Expenses*

- (a) The amount of Administrative Expenses payable by the Issuer and NP ELM (if any) in respect of any Henley Series I Payment Dates since the previous Report.

Each Report shall state that it is for the purposes of information only, that certain information included in the report is estimated, approximated or projected and that it is provided without any representations or warranties as to the accuracy or completeness thereof and that none of the Collateral Administrator, the Trustee, the Issuer, NP ELM or the Portfolio Adviser will have any liability for estimates, approximations or projections contained therein.

## CERTAIN ERISA CONSIDERATIONS

ERISA imposes certain requirements on "employee benefit plans" subject thereto including entities (such as collective investment funds, insurance company separate accounts and some insurance company general accounts) the underlying assets of which include the assets of such plans (collectively, **ERISA Plans**), and on those persons who are fiduciaries with respect to ERISA Plans. Investments by ERISA Plans are subject to ERISA's general fiduciary requirements, including the requirements of prudence, diversification, and that investments be made in accordance with the documents governing the plan. The prudence of a particular investment must be determined by the responsible fiduciary of an ERISA Plan by taking into account the ERISA Plan's particular circumstances and all of the facts and circumstances of the investment.

Section 406 of ERISA and Section 4975 of the Code prohibit certain transactions involving the assets of an ERISA Plan, as well as assets of those plans that are not subject to ERISA but which are subject to Section 4975 of the Code, such as individual retirement accounts and Keogh plans, and entities the underlying assets of which include the assets of such plans (together with ERISA Plans, **Plans**) including specified transactions with certain persons (referred to as "parties in interest" under ERISA or "disqualified persons" under the Code (collectively, **Parties in Interest**)) having certain relationships to such Plans, unless a statutory or administrative exception or exemption is applicable to the transaction. Among other potential effects, a Party in Interest who engages in a prohibited transaction may be subject to excise taxes and other penalties and liabilities under ERISA and the Code and the transaction may have to be rescinded.

The Issuer, NP ELM, the Portfolio Adviser, their respective Affiliates or any other party to the transactions referred to in this Private Placement Memorandum may be Parties in Interest with respect to many Plans. Prohibited transactions within the meaning of Section 406 of ERISA or Section 4975 of the Code may arise if any of the Henley Series I Notes is acquired or held by a Plan, including but not limited to where the Issuer, NP ELM, the Portfolio Adviser, their respective Affiliates or any other party to such transactions is a Party in Interest. Certain exemptions from the prohibited transaction provisions of Section 406 of ERISA and Section 4975 of the Code may be applicable, however, depending in part on the type of Plan fiduciary making the decision to acquire any Henley Series I Notes and the circumstances under which such decision is made. Included among these exemptions are Section 408(b)(17) of ERISA and Section 4975(d)(20) of the Code (relating to transactions between a person that is a Party in Interest (other than a fiduciary or an affiliate that has or exercises discretionary authority or control or renders investment advice with respect to assets involved in the transaction) solely by reason of providing services to the plan, provided that there is adequate consideration for the transaction), Prohibited Transaction Class Exemption (**PTCE**) 91-38 (relating to investments by bank collective investment funds), PTCE 84-14 (relating to transactions effected by a qualified professional asset manager), PTCE 95-60 (relating to transactions involving insurance company general accounts), PTCE 90-1 (relating to investments by insurance company pooled separate accounts) and PTCE 96-23 (relating to transactions determined by in-house asset managers). Prospective investors should consult with their advisors regarding the prohibited transaction rules and these exceptions. There can be no assurance that any of these exemptions or any other exemption will be available with respect to any particular transaction involving any Henley Series I Notes.

Governmental plans (as defined in Section 3(32) of ERISA), certain church plans (as defined in Section 3(33) of ERISA) and non-U.S. plans (as described in Section 4(b)(4) of ERISA), while not subject to the fiduciary responsibility or prohibited transaction provisions of ERISA or the provisions of Section 4975 of the Code, may nevertheless be subject to rules under federal, state, local or non-U.S. laws that are substantially similar to the prohibited transaction provisions of Section 406 of ERISA and/or Section 4975 of the Code (**Similar Law**), and may be subject to the prohibited transaction rules of Section 503 of the Code.

Under ERISA and a regulation issued by the United States Department of Labor (29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA (the **Plan Asset Regulation**)), if a Plan invests in an "equity interest" of an entity that is neither a "publicly offered security" nor a security issued by an investment company registered under the Investment Company Act of 1940, the Plan's assets are deemed to include both the equity interest and

an undivided interest in each of the entity's underlying assets, unless it is established (a) that the entity is an "operating company," as that term is defined in the Plan Asset Regulation, or (b) that less than 25 per cent. of the total value of each class of equity interest in the entity, disregarding the value of any equity interests held by persons (other than Benefit Plan Investors) with discretionary authority or control over the assets of the entity or who provide investment advice for a fee (direct or indirect) with respect to such assets, or any "affiliate" (as that term is defined in the Plan Asset Regulation) of any such person (each a **Controlling Person**), is held by Benefit Plan Investors (the **25 per cent. Limitation**). A "Benefit Plan Investor" means (1) an employee benefit plan (as defined in Section 3(3) of ERISA), subject to the provisions of Part 4 of Subtitle B of Title I of ERISA, (2) a plan to which Section 4975 of the Code applies, or (3) any entity whose underlying assets include plan assets by reason of such an employee benefit plan or plan's investment in such entity.

If the underlying assets of the Issuer are deemed to be Plan assets, the obligations and other responsibilities of Plan sponsors, Plan fiduciaries and Plan administrators, and of Parties in Interest, under Parts 1 and 4 of Subtitle B of Title I of ERISA and Section 4975 of the Code, as applicable, may be expanded, and there may be an increase in their exposure to liability under these and other provisions of ERISA and the Code. In addition, various providers of fiduciary or other services to the Issuer, and any other parties with authority or control with respect to the Issuer, could be deemed to be Plan fiduciaries or otherwise Parties in Interest by virtue of their provision of such services (and there could be an improper delegation of authority to such providers).

The Plan Asset Regulation defines an "equity interest" as any interest in an entity other than an instrument that is treated as indebtedness under applicable local law and that has no substantial equity features. The Henley Series I Notes may be considered "equity interests" for purposes of the Plan Asset Regulation. Accordingly, the Issuer intends to limit investments by Benefit Plan Investors in the Henley Series I Notes. In reliance on representations made by Henley Series I Noteholders, the Issuer intends to limit investment by Benefit Plan Investors in the Henley Series I Notes to less than 25 per cent. of the Henley Series I Notes at all times (excluding for purposes of such calculation the Henley Series I Notes held by a Controlling Person). Each prospective purchaser (including a transferee) of a Henley Series I Note will be required to make certain representations regarding its status as a Benefit Plan Investor or Controlling Person and other ERISA matters as described below and under "*Transfer Restrictions*".

It is possible that an investment in the Henley Series I Notes (or any interests therein) by a Benefit Plan Investor (or with the use of the assets of a Benefit Plan Investor) could be treated as a prohibited transaction under ERISA and/or Section 4975 of the Code. Such a prohibited transaction, however, may satisfy one or more statutory or administrative exemptions. Even if an exemption were to apply, such exemption may not, however, apply to all of the transactions that could be deemed prohibited transactions in connection with an investment in the Henley Series I Notes by a Benefit Plan Investor.

Each of NP ELM, the Portfolio Adviser, or their respective Affiliates may be the sponsor of, or investment adviser with respect to one, or more Plans. Because such parties may receive certain benefits in connection with the sale of the Henley Series I Notes to such Plans, whether or not the Henley Series I Notes are treated as equity interests in the Issuer, the purchase of such Henley Series I Notes using the assets of a Plan over which any of such parties has investment authority or provide other services might be deemed to be a violation of the prohibited transaction rules of ERISA and/or Section 4975 of the Code for which no exemption may be available. Accordingly, the Henley Series I Notes may not be acquired using the assets of any Plan if any of the Issuer, NP ELM, the Portfolio Adviser or their respective Affiliates has investment authority with respect to such assets (except to the extent (if any) that a favourable statutory or administrative exemption or exception applies).

It should be noted that an insurance company's general account may be deemed to include assets of Plans under certain circumstances, e.g., where a Plan purchases certain types of annuity contracts issued by such an insurance company, based on the reasoning of the United States Supreme Court in *John Hancock Mutual Life Ins. Co. v. Harris Trust and Savings Bank*, 510 U.S. 86 (1993). An insurance company considering the purchase of Henley Series I Notes with assets of its general account should consider such purchase and the insurance company's ability to make the representations described above in light of *John Hancock Mutual Life Ins. Co. v.*

Harris Trust and Savings Bank, Section 401(c) of ERISA and a regulation promulgated by the U.S. Department of Labor at 29 C.F.R. Section 2550.401c-1.

An investor that is a Controlling Person, a Benefit Plan Investor or acting on behalf of a Benefit Plan Investor, may acquire a Henley Series I Note (or any interest therein) if such investor: (A) obtains the written consent of the Issuer and (B) provides an ERISA certificate to the Issuer as to its status as a Benefit Plan Investor or Controlling Person (substantially in the form of Annex A to this Private Placement Memorandum). A purchaser or transferee or other holder of a Henley Series I Note or any interest in such Henley Series I Note will be required to (i) represent and warrant in writing to the Issuer in an ERISA certificate (1) whether or not, for so long as it holds such Henley Series I Notes or any interest herein, it is, or is acting on behalf of, a Benefit Plan Investor, or is a Controlling Person and (2) that if it is, or is acting on behalf of, a Benefit Plan Investor, its acquisition, holding and disposition of such Henley Series I Notes (or any interest therein) will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code. If such purchaser or transferee is a governmental, church, non-U.S. plan or other plan, (x) it is not, and for so long as it holds such Henley Series I Notes or any interest therein will not be, subject to any federal, state, local, non-U.S. or other law or regulation that could cause the underlying assets of the Issuer to be treated as assets of the Henley Series I Noteholder (or the holder of any interest therein) by virtue of its interest and thereby subject the Issuer (or other persons responsible for the investment and operation of the Issuer's assets) to any Similar Law and (y) its acquisition, holding and disposition of such Henley Series I Notes (or any interest therein) will not constitute or result in a violation of any Similar Law, and (ii) agree to certain transfer restrictions regarding its interest in such Henley Series I Notes.

Without limiting any other restriction applicable to holding the Henley Series I Notes, no purchase or transfer of the Henley Series I Notes (or any interest therein) will be permitted or recognised if it would cause the 25 per cent. Limitation described above to be exceeded with respect to the Henley Series I Notes.

Any Plan fiduciary considering whether to acquire a Henley Series I Note or interest in a Henley Series I Note on behalf of a Plan or an employee benefit plan not subject to ERISA or Section 4975 of the Code should consult with its counsel regarding the potential consequences of such investment, the applicability of the fiduciary responsibility and prohibited transaction provisions of ERISA and Section 4975 of the Code and/or provisions of Similar Law, and the scope of any available exemption relating to such investment.

The sale of Henley Series I Notes or any interest therein to a Plan or an employee benefit plan not subject to ERISA or Section 4975 of the Code is in no respect a representation or warranty by the Issuer, or any other person that this investment meets all relevant legal requirements with respect to investments by Plans or such other plans generally or any particular plan, that any prohibited transaction exemption would apply to the acquisition, holding, or disposition of this investment by such plans in general or any particular plan, or that this investment is appropriate for such plans generally or any particular plan.

## TAX CONSIDERATIONS

### 1. GENERAL

Purchasers of Henley Series I Notes may be required to pay stamp taxes and other charges in accordance with the laws and practices of the country of purchase in addition to the issue price of each Henley Series I Note.

Potential purchasers who are in any doubt about their tax position on purchase, ownership, transfer or exercise of any Henley Series I Note should consult their own tax advisers. In particular, no representation is made as to the manner in which payments under the Henley Series I Notes would be characterised by any relevant taxing authority. Potential investors should be aware that the relevant fiscal rules or their interpretation may change, possibly with retrospective effect, and that this summary is not exhaustive. This summary does not constitute legal or tax advice or a guarantee to any potential investor of the tax consequences of investing in the Henley Series I Notes.

### 2. TAX CONSIDERATIONS: IRELAND

*The following is a summary of the principal Irish tax consequences for individuals and companies of ownership of the Henley Series I Notes based on the laws and practice of the Irish Revenue Commissioners currently in force in Ireland and may be subject to change. It deals with Henley Series I Noteholders who beneficially own their Henley Series I Notes as an investment. Particular rules not discussed below may apply to certain classes of taxpayers holding Henley Series I Notes, such as dealers in securities, trusts, etc. The summary does not constitute tax or legal advice and the comments below are of a general nature only. Prospective investors in the Henley Series I Notes should consult their professional advisers on the tax implications of the purchase, holding, redemption or sale of the Henley Series I Notes and the receipt of interest thereon under the laws of their country of residence, citizenship or domicile.*

#### 2.1 Withholding Tax

In general, tax at the standard rate of income tax (currently 20 per cent.), is required to be withheld from payments of Irish source interest which should include interest payable on the Henley Series I Notes. The Issuer will not be obliged to make a withholding or deduction for or on account of Irish income tax from a payment of interest on a Henley Series I Note so long as the interest paid on the relevant Henley Series I Note falls within one of the following categories and meets the relevant conditions:

(a) **Interest paid on a quoted Eurobond:**

A quoted Eurobond is a security which is issued by a company (such as the Issuer), is listed on a recognised stock exchange (such as Euronext Dublin) and carries a right to interest. Provided that the Henley Series I Notes carry an amount in respect of interest and are listed on Euronext Dublin (or any other recognised stock exchange), interest paid on them can be paid free of withholding tax provided the person by or through whom the payment is made is not in Ireland, or if such person is in Ireland, either:

- (i) the Henley Series I Note is held in a clearing system recognised by the Irish Revenue Commissioners (DTC, Euroclear and Clearstream, Luxembourg are, amongst others, so recognised); 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 a declaration to a relevant person (such as a paying agent located in Ireland) in the prescribed form.

(b) **Interest paid by a qualifying company or in the ordinary course of business to certain non-residents and other persons:**

If the quoted Eurobond exemption referred to above does not apply (for example where the paying agent is in Ireland), interest payments may still be made free of withholding tax provided that the person beneficially entitled to the interest is a Qualifying Noteholder.

The Issuer must be satisfied that the person beneficially entitled to the interest is a Qualifying Noteholder and a Henley Series I Noteholder will be required to provide this confirmation to the Issuer. The test of residence in each case is determined by reference to the law of the Relevant Territory in which the Henley Series I Noteholder claims to be resident.

In each of (a) and (b) above, a Henley Series I Noteholder will also be required to provide certain documents and confirmations to the Issuer, in particular that it is a Qualifying Noteholder or that it is not a company which, directly or indirectly, controls the Issuer, is controlled by the Issuer, or is controlled by a third company which also directly or indirectly controls the Issuer, and neither the Henley Series I Noteholder, nor any person connected with the Henley Series I Noteholder, is a person or persons:

- (a) from whom the Issuer has acquired assets;
- (b) to whom the Issuer has made loans or advances; or
- (c) with whom the Issuer has entered into certain specified agreements (such as swap agreements)

where the aggregate value of such assets, loans, advances or swap agreements represents not less than 75 per cent. of the aggregate value of the assets of the Issuer.

For other holders of Henley Series I Notes, interest may be paid free of withholding tax if the Henley Series I Noteholder is resident in a double tax treaty country and under the provisions of the relevant treaty with Ireland such Henley Series I Noteholder is exempt from Irish tax on the interest and clearance in the prescribed form has been received by the Issuer before the interest is paid.

## **2.2 Deductibility of Interest**

New rules contained in the Finance Act 2016 restrict deductibility of interest paid by a qualifying company for the purposes of Section 110 of the TCA that is profit dependent or exceeds a reasonable commercial return to the extent that the interest is associated with the business of a qualifying company of holding, *inter alia*, "specified mortgages", subject to a number of exceptions. A "specified mortgage" for this purpose is (a) a loan which is secured on, and which derives its value from, or the greater part of its value from, directly or indirectly, Irish land or (b) a 'specified agreement' (effectively a profit dependent derivative) which derives all of its value, or the greater part of its value, directly or indirectly, from Irish land or a loan to which (a) applies. The legislation treats the holding of such specified mortgages as a separate business to the rest of the qualifying company's activities. The qualifying company is taxed on any profit that is attributable to that business at 25 per cent. and any such interest that is profit dependent or exceeds a reasonable commercial return is not deductible, subject to a number of exceptions, and potentially subject to Irish withholding tax at 20 per cent.

These new rules could apply to activities carried on by NP ELM if NP ELM acquires any "specified mortgages" or other assets which derive their value or the greater part of their value from Irish land. However, based on the investment eligibility criteria that govern the type and quality of assets to be acquired by NP ELM, NP ELM should not acquire any specified mortgages and therefore the new rules should not apply to NP ELM.

## **2.3 Encashment Tax**

Irish tax will be required to be withheld at the standard rate of income tax (currently 20 per cent.) from interest on any Henley Series I Note, where such interest is collected or realised by a bank or encashment agent in Ireland on behalf of any Henley Series I Noteholder. There is an exemption from encashment tax where the beneficial owner of the interest is not resident in Ireland and has made a declaration to this effect in the prescribed form to the encashment agent or bank.

## **2.4 Income Tax, PRSI and Universal Social Charge**

Notwithstanding that a Henley Series I Noteholder may receive interest on the Henley Series I Notes free of withholding tax, the Henley Series I Noteholder may be liable to pay Irish tax with respect to interest on the Henley Series I Notes. Henley Series I Noteholders resident or ordinarily resident in Ireland who are individuals may be liable to pay Irish income tax, pay related social insurance (PRSI) contributions and the universal social charge in respect of interest they receive on the Henley Series I Notes.

Interest paid on the Henley Series I Notes may have an Irish source and therefore may be within the charge to Irish income tax notwithstanding that the Henley Series I Noteholder is not resident in Ireland. In the case of Henley Series I Noteholders who are non-resident individuals such Henley Series I Noteholders may also be liable to pay the universal social charge in respect of interest they receive on the Henley Series I Notes.

Ireland operates a self-assessment system in respect of tax and any person, including a person who is neither resident nor ordinarily resident in Ireland, with Irish source income comes within its scope.

There are a number of exemptions from Irish income tax available to certain non-residents. Firstly, interest payments made by the Issuer are exempt from income tax so long as the Issuer is a qualifying company for the purposes of Section 110 of the TCA, the recipient is not resident in Ireland and is resident in a Relevant Territory and, the interest is paid out of the assets of the Issuer. Secondly, interest payments made by the Issuer in the ordinary course of its business are exempt from income tax provided the recipient is not resident in Ireland and is a company which is either resident in a Relevant Territory which imposes a tax that generally applies to interest receivable in that Relevant Territory by companies from sources outside that Relevant Territory or, in respect of the interest is exempted from the charge to Irish income tax under the terms of a double tax agreement which is either in force or which is not yet in force but which will come into force once all ratification procedures have been completed. Thirdly, interest paid by the Issuer free of withholding tax under the quoted Eurobond exemption is exempt from income tax where the recipient is a person not resident in Ireland and resident in a Relevant Territory or is a company not resident in Ireland which is under the control, whether directly or indirectly, of person(s) who by virtue of the law of a Relevant Territory is resident for the purposes of tax in a Relevant Territory and are not under the control of person(s) who are not so resident, or is a company not resident in Ireland where the principal class of shares of the company or its 75 per cent. parent is substantially and regularly traded on a recognised stock exchange. For these purposes, residence is determined under the terms of the relevant double taxation agreement or in any other case, the law of the country in which the recipient claims to be resident. Interest falling within the above exemptions is also exempt from the universal social charge.

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

Relief from Irish income tax may also be available under the specific provisions of a double tax treaty between Ireland and the country of residence of the recipient.

Interest on the Henley Series I Notes which does not fall within the above exemptions is within the charge to income tax, and, in the case of Henley Series I Noteholders who are individuals, is subject to the universal social charge. In the past the Irish Revenue Commissioners have not pursued liability to tax in respect of persons who are not regarded as being resident in Ireland except where such persons have a taxable presence of some sort in Ireland or seek to claim any relief or repayment in respect of Irish tax. However, there can be no assurance that the Irish Revenue Commissioners will apply this treatment in the case of any Henley Series I Noteholder.

## **2.5 Capital Gains Tax**

A Henley Series I Noteholder will not be subject to Irish tax on capital gains on a disposal of Henley Series I Notes unless (i) such holder is either resident or ordinarily resident in Ireland or (ii) such holder carries on a trade in Ireland through a branch or agency in respect of which the Henley Series I Notes were used or held or (iii) in the case of Henley Series I Notes which derive their value or more than 50 per cent. of their value from Irish real estate, mineral rights or exploration rights, unless the Henley Series I Notes cease to be quoted on a stock exchange.

## **2.6 Capital Acquisitions Tax**

A gift or inheritance comprising of Henley Series I Notes will be within the charge to capital acquisitions tax (which subject to available exemptions and reliefs, is currently levied at 33 per cent). if either (i) the disponent or the donee/successor in relation to the gift or inheritance is resident or ordinarily resident in Ireland (or, in certain circumstances, if the disponent is domiciled in Ireland irrespective of his residence or that of the donee/successor) on the relevant date or (ii) if the Henley Series I Notes are regarded as property situate in Ireland (i.e., if the Henley Series I Notes are physically located in Ireland or if the register of the Henley Series I Notes is maintained in Ireland).

## **2.7 Stamp Duty**

No stamp duty or similar tax is imposed in Ireland on the issue, transfer or redemption of the Henley Series I Notes provided the Issuer is a qualifying company for the purposes of Section 110 of the TCA and the proceeds of the Henley Series I Notes are used in the course of the Issuer's business.

## **2.8 Automatic Exchange of Information**

Irish reporting financial institutions, which may include the Issuer have reporting obligations in respect of a Henley Series I Noteholder under FATCA as implemented pursuant to the Ireland – US intergovernmental agreement and/or the OECD's Common Reporting Standard (see below).

## **2.9 Information exchange and the implementation of FATCA in Ireland**

The Issuer may be obliged to report certain information in respect of certain U.S. investors (Henley Series I Noteholders) in the Issuer to the Irish Revenue Commissioners who will then share that information with the U.S. tax authorities.

FATCA imposes a 30 per cent. US withholding tax on certain 'withholdable payments' made on or after 1 July 2014 unless the payee enters into and complies with an agreement with the IRS to collect and provide to the IRS substantial information regarding direct and indirect owners and account holders.

On 21 December 2012 Ireland signed an Intergovernmental Agreement the (IGA) with the United States to Improve International Tax Compliance and to Implement FATCA. Under this agreement Ireland agreed to implement legislation to collect certain information in connection with FATCA and the Irish and U.S. tax authorities have agreed to automatically exchange this information. The IGA provides for the annual automatic exchange of information in relation to accounts and investments held by certain U.S. persons in a broad category of Irish financial institutions and vice versa.

Under the IGA and the Financial Accounts Reporting (United States of America) Regulations 2014 as amended (which came into operation on 1 July 2014) (the **Irish Regulations**) implementing the information disclosure obligations Irish reporting financial institutions are required to report certain information with respect to U.S. account holders to the Irish Revenue Commissioners. The Irish Revenue Commissioners will automatically provide that information annually to the IRS. To the extent the Issuer is an Irish reporting financial institution it will need to obtain the necessary information from Henley Series I Noteholders required to satisfy the reporting requirements whether under the IGA, the Irish Regulations or any other applicable legislation published in connection with FATCA and such information may be sought from each Henley Series I Noteholder and beneficial owner of the Henley Series I Notes. It should be noted that the Irish Regulations require the collection of information and filing of returns with the Irish Revenue Commissioners regardless as to whether the Issuer holds any U.S. assets or has any U.S. investors. However to the extent that the Henley Series I Notes are listed on a recognised stock exchange and regularly traded (i.e. listed with the intention that the interests may be traded) and/or are held in a recognised clearing system the Issuer should have no reportable accounts in a tax year. In that event the Issuer, if an Irish reporting financial institution, will make a nil return for that year to the Irish Revenue Commissioners. Where the Henley Series I Notes do not satisfy the 'regularly traded' requirement and are not, or are no longer held, in a clearing system then the Issuer will need to report annually on its US reportable accounts to the extent it has any. In this regard it will need to have a way of having the requisite information collected on its behalf.

Henley Series I Noteholders should obtain independent tax advice in relation to the potential impact of FATCA before investing.

## 2.10 Common Reporting Standard (CRS)

The CRS framework was first released by the OECD in February 2014. To date, more than 90 jurisdictions have publically committed to implementation, many of which are early adopter countries, including Ireland. On 21 July 2014, the Standard for Automatic Exchange of Financial Account Information in Tax Matters (the "Standard") was published, involving the use of two main elements, the Competent Authority Agreement (the **CAA**) and the CRS.

The goal of the Standard is to provide for the annual automatic exchange between governments of financial account information reported to them by local Financial Institutions (**FI**s) relating to account holders tax resident in other participating countries to assist in the efficient collection of tax. The OECD, in developing the CAA and CRS, have used FATCA concepts and as such the Standard is broadly similar to the FATCA requirements, albeit with numerous alterations. It will result in a significantly higher number of reportable persons due to the increased instances of potentially in-scope accounts and the inclusion of multiple jurisdictions to which accounts must be reported.

Ireland is a signatory jurisdiction to the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, which was entered into by Ireland in its capacity as a signatory to the Convention on Mutual Administrative Assistance in Tax Matters and which relates to the automatic exchange of financial account information in respect of CRS, while sections 891F and 891G of the 1997 Act and regulations made thereunder contain measures necessary to implement the CRS internationally and across the European Union, respectively. Regulations, the Returns of Certain Information by Reporting Financial Institutions Regulations 2015 (the "CRS Regulations"), giving effect to the CRS from 1 January 2016 came into operation on 31 December 2015.

Directive 2014/107/EU on Administrative Cooperation in the Field of Taxation (**DAC III**) implements CRS in a European context and creates a mandatory obligation for all EU Member States to exchange financial account information in respect of residents in other EU Member States on an annual basis commencing in 2017 in respect of the 2016 calendar year. The Irish Finance Act 2015 contained measures necessary to implement the DAC III. Regulations, the Mandatory Automatic Exchange of Information in the Field of Taxation Regulations 2015 (together with the CRS Regulations, the **Regulations**), giving effect to DAC III from 1 January 2016, came into operation on 31 December 2015.

Under the CRS Regulations, reporting financial institutions are required to collect certain information on accountholders and on certain Controlling Persons (as defined in the Regulations) in the case of the accountholder(s) being an Entity, as defined for CRS purposes, (e.g. name, address, jurisdiction of residence, TIN, date and place of birth (as appropriate), the account number and the account balance or

value at the end of each calendar year) to identify accounts which are reportable to the Irish tax authorities. The Irish tax authorities shall in turn exchange such information with their counterparts in participating jurisdictions. Where Henley Series I Notes are held in a clearing system it is understood that either the clearing system itself or the relevant clearing participants are likely to be considered FIs and accordingly the Issuer should not have reporting obligations in respect of Henley Series I Noteholders holding those Henley Series I Notes. In that event the Issuer will make a nil return for that year to the Irish Revenue Commissioners. Further information in relation to CRS and DAC III can be found on the Automatic Exchange of Information webpage on [www.revenue.ie](http://www.revenue.ie).

### 3. TAX CONSIDERATIONS: UNITED STATES

#### 3.1 Introduction

This is a discussion of the principal U.S. federal income tax consequences of the acquisition, ownership, disposition, and retirement of the Henley Series I Notes. Except as expressly set out below, this discussion does not address all aspects of U.S. federal income taxation that may be relevant to a particular Henley Series I Noteholder based on such Henley Series I Noteholder's particular circumstances, nor does it address any aspect of state, local, or non-U.S. tax laws, alternative minimum tax or net investment tax considerations, or the possible application of U.S. federal gift or estate taxes. In particular, except as expressly set out below, this discussion does not address aspects of U.S. federal income taxation that may be applicable to Henley Series I Noteholders that are subject to special treatment, including Henley Series I Noteholders that: (i) are broker-dealers, securities traders, insurance companies, tax-exempt organisations, financial institutions, real estate investment trusts, regulated investment companies or grantor trusts; (ii) are certain former citizens or long-term residents of the United States; (iii) hold Henley Series I Notes as part of a "straddle", "hedge", "conversion", "integrated transaction" or "constructive sale" with other investments; or (iv) own or are deemed to own 10 per cent. or more, of the equity of the Issuer.

This discussion considers only Henley Series I Noteholders that will hold Henley Series I Notes as capital assets and does not address special tax consequences that apply to U.S. Henley Series I Noteholders (as defined below) whose functional currency is not the U.S. Dollar. This discussion is generally limited to the tax consequences to Henley Series I Noteholders that purchase Henley Series I Notes upon their initial issue at their issue price.

For purposes of this discussion, **U.S. Noteholder** means a beneficial owner of a Henley Series I Note that is, for U.S. federal income tax purposes:

- (a) a citizen or individual resident of the United States;
- (b) a corporation created or organised under the laws of the United States or any State thereof including the District of Columbia;
- (c) an estate, the income of which is subject to U.S. federal income tax regardless of the source; or
- (d) a trust, (i) that validly elects to be treated as a U.S. person for U.S. federal income tax purposes; or (ii)(A) if a court within the U.S. is able to exercise primary supervision over the administration of the trust; and (B) one or more U.S. persons have the authority to control all substantial decisions of the trust.

The term "**non-U.S. Noteholder**" means, for purposes of this discussion, a beneficial owner of the Henley Series I Notes that is not a partnership or a U.S. Noteholder.

If a partnership (or any other entity treated as a partnership for U.S. federal income tax purposes) holds the Henley Series I Notes, the tax treatment of the partnership and a partner in such partnership generally will depend on the status of the partner and the activities of the partnership. Such a partner or

partnership should consult its own tax advisor as to the consequences of the acquisition, ownership, disposition and retirement of the Henley Series I Notes.

This discussion is based upon the U.S. Internal Revenue Code of 1986, as amended (the **Code**), existing and proposed regulations thereunder, and current administrative rulings and court decisions, each as available and in effect as of the date hereof. All of the foregoing are subject to change, possibly on a retroactive basis, and any such change could affect the continuing validity of this discussion. Furthermore, there are no cases or rulings by the U.S. Internal Revenue Service (the **IRS**) addressing entities similar to the Issuer or securities similar to the Henley Series I Notes. As a result, the IRS might disagree with all or part of the discussion below. No rulings will be requested of the IRS regarding the issues discussed below or the U.S. federal income tax characterisation of the Henley Series I Notes.

Prospective Henley Series I Noteholders should consult their tax advisor concerning the application of U.S. federal income tax laws, as well as the laws of any state or local taxing jurisdiction, to their particular situation.

### 3.2 Tax Considerations Relating to the Henley Series I Notes

The Henley Series I Notes will be treated as equity in the Issuer for U.S. federal income tax purposes.

A non-U.S. corporation will be classified as a passive foreign investment company (a **PFIC**) for U.S. federal income tax purposes if 75 per cent. or more of its gross income (including the pro rata share of the gross income of any corporation in which the non-U.S. corporation is considered to own 25 per cent. or more of the shares by value) in a taxable year is passive income. Alternatively, a non-U.S. corporation will be classified as a PFIC if at least 50 per cent. of its assets, averaged over the year and generally determined based on fair market value (including the pro rata share of the assets of any corporation in which the Issuer is considered to own 25 per cent. or more of the shares by value) are held for the production of, or produce, passive income.

Based on the assets that the Issuer expects to hold and the income anticipated thereon, it is highly likely that the Issuer will be classified as a PFIC for U.S. federal income tax purposes. In addition, any entity in which the Issuer holds an equity interest that is treated as a corporation for U.S. federal income tax purposes may be a PFIC, including NP ELM, certain CLOs in which NP ELM invests and certain subsidiaries thereof (any such entity a **lower-tier PFIC**). Accordingly, U.S. Noteholders should assume that they will be subject to the U.S. federal income tax consequences described below that result from owning stock in a PFIC (subject to the discussion below under "*Investment in a Controlled Foreign Corporation*").

Unless a U.S. Noteholder elects to treat the Issuer as a "qualified electing fund" (as described in the next paragraph), upon certain distributions ("excess distributions") by the Issuer and upon a disposition of the Henley Series I Notes at a gain, the U.S. Noteholder will be liable to pay tax at the highest tax rate on ordinary income in effect for each period to which the income is allocated plus interest on the tax, as if such distributions and gain had been recognised rateably over the U.S. Noteholder's holding period for the Henley Series I Notes. An interest charge is also applied to the deferred tax amount resulting from the deemed rateable distribution. Under the attribution rules described above, U.S. Noteholders would be deemed to own their proportionate shares of any lower-tier PFIC and would be subject to tax according to the rules described above on (i) certain distributions by such lower-tier PFIC and (ii) a disposition of shares of a lower-tier PFIC, in each case as if the U.S. Noteholder held such shares directly, even though the U.S. Noteholder had not received the proceeds of those distributions or dispositions.

If a U.S. Noteholder elects to treat the Issuer and any lower tier PFIC as a "qualified electing fund" (a **QEF**), distributions and gain will not be taxed as if recognised rateably over the U.S. Noteholder's holding period or subject to an interest charge. Instead, a U.S. Noteholder that makes a QEF election is

required for each taxable year to include in income the U.S. Noteholder's pro rata share of the ordinary earnings of the relevant QEF as ordinary income and a pro rata share of the net capital gain of the relevant QEF as capital gain, regardless of whether such earnings or gain have in fact been distributed (assuming the discussion below under "*Investment in a Controlled Foreign Corporation*" does not apply), and subject to a separate election to defer payment of taxes, which deferral is subject to an interest charge. Consequently, in order to comply with the requirements of a QEF election, a U.S. Noteholder must receive from the Issuer (and any lower-tier PFIC, as the case may be) certain information (**QEF Information**). The Issuer will cause its independent accountants to provide a U.S. Noteholder, upon request by such U.S. Noteholder and at the expense of such U.S. Noteholder, with the information reasonably available to the Issuer that a U.S. Noteholder would need to make a QEF election. However, no assurance can be given that the Issuer will be able to obtain the necessary information from any lower-tier PFIC. Except as expressly noted, the discussion below assumes that a QEF election will not be made. The cost charged to the U.S. Noteholder by the Issuer for providing the information may be significant.

Each U.S. Noteholder must make an annual return on IRS Form 8621, reporting distributions received and gains realised with respect to each PFIC in which the U.S. Noteholder holds a direct or indirect interest. Special rules apply to certain regulated investment companies that own interests in PFICs and any such investor should consult with its own tax advisers regarding the consequences to it of acquiring Henley Series I Notes. If a U.S. Noteholder does not file Form 8621, the statute of limitations on the assessment and collection of U.S. federal income taxes of such U.S. Noteholder for the related tax year may not close before the date which is three years after the date on which such report is filed. Prospective investors should consult their own tax advisers regarding the potential application of the PFIC rules.

### 3.3 Investment in a Controlled Foreign Corporation

Depending on the degree of ownership of the Henley Series I Notes by U.S. Noteholders, the Issuer may constitute a controlled foreign corporation (**CFC**) for U.S. federal income tax purposes. In addition, any entity in which the Issuer holds an equity interest that is treated as a corporation for U.S. federal income tax purposes may constitute a CFC, including NP ELM, certain CLOs in which NP ELM invests and certain subsidiaries thereof. In general, a foreign corporation will constitute a CFC if more than 50 per cent. of the shares of the corporation, measured by reference to combined voting power or value, are owned, directly or indirectly, by "US 10 per cent. Shareholders". A **U.S. 10 per cent. Shareholder**, for this purpose, is any U.S. person that owns or is treated as owning, 10 per cent. or more of the combined voting power or value of all classes of shares of a corporation. A U.S. 10 per cent. Shareholder of a CFC is generally treated, subject to certain exceptions, as receiving a dividend at the end of the taxable year of the CFC in an amount equal to that person's pro rata share of the "subpart F income" and investments in U.S. property of the CFC. Among other items, and subject to certain exceptions, "subpart F income" includes dividends, interest, annuities, gains from the sale of shares and securities, certain gains from commodities transactions, certain types of insurance income and income from certain transactions with related parties. It is likely that, if the Issuer and any entity in which the Issuer owns an interest were to constitute a CFC, substantially all of the income of the Issuer and any such entity would be subpart F income. In addition, special rules apply to determine the appropriate exchange rate to be used to translate such amounts treated as a dividend and the amount of any foreign currency gain or loss with respect to distributions of previously taxed amounts attributable to movements in exchange rates between the times of deemed and actual distributions and certain "dividends" from such CFC could be recharacterised as U.S. source income for U.S. foreign tax credit purposes. Unless otherwise noted, the discussion below assumes that neither the Issuer nor any entity in which the Issuer owns an interest is a CFC. U.S. Noteholders should consult their tax advisers regarding these special rules.

If the Issuer or any entity in which the Issuer owns an interest were to constitute a CFC, for the period during which a U.S. Noteholder is a U.S. 10 per cent. Shareholder, such Henley Series I Noteholder generally would be taxable on the subpart F income and investments in U.S. property of the CFC under rules described in the preceding paragraph and not under the PFIC rules previously described. A U.S. Noteholder that is a U.S. 10 per cent. Shareholder subject to the CFC rules for only a portion of the time during which it holds Henley Series I Notes should consult its own tax advisor regarding the interaction of the PFIC and CFC rules.

The Issuer intends to supply U.S. Noteholders (at the expense of any such U.S. Noteholders) with the information needed for such U.S. Noteholders to comply with the CFC rules. No assurance can be given that the Issuer will be able to obtain the necessary information from any entity in which the Issuer owns an interest that is classified as a CFC. The cost charged to a U.S. Noteholder by the Issuer for providing the information may be significant.

### **3.4 Distributions on the Henley Series I Notes**

Except to the extent that distributions are attributable to amounts previously taxed pursuant to the CFC rules or a QEF election is made, some or all of any distributions with respect to the Henley Series I Notes may constitute excess distributions, taxable as previously described. Distributions of current or accumulated earnings and profits of the Issuer which are not excess distributions will be taxed as dividends when received. The amount of such income is determined by translating Euro received into U.S. Dollars at the spot rate on the date of receipt. A U.S. Noteholder may realise foreign currency gain or loss on a subsequent disposition of the Euro received.

### **3.5 Disposition of the Henley Series I Notes**

In general, a U.S. Noteholder will recognise gain or loss upon the sale or exchange of a Henley Series I Note equal to the difference between the amount realised and such Henley Series I Noteholder's adjusted tax basis in such Henley Series I Note. Initially, the tax basis of a U.S. Noteholder should equal the amount paid for a Henley Series I Note. Such basis will be increased by amounts taxable to such Henley Series I Noteholder by virtue of the QEF or CFC rules (if applicable), and decreased by actual distributions from the Issuer that are deemed to consist of such previously taxed amounts or are treated as a non-taxable return of capital. A U.S. Noteholder that receives foreign currency upon the sale or other disposition of the Henley Series I Notes generally will realise an amount equal to the U.S. Dollar value of the foreign currency on the date of sale. A U.S. Noteholder will have a tax basis in the foreign currency received equal to the U.S. Dollar amount realised. Any gain or loss realised by a U.S. Noteholder on a subsequent conversion of the foreign currency for a different amount will be foreign currency gain or loss. If, however, the Henley Series I Notes are traded on an established securities market, a cash basis U.S. Noteholder or electing accrual basis U.S. Noteholder will determine the amount realised on the settlement date.

Unless a QEF election is made, it is highly likely that any gain realised on the sale or exchange will be treated as an excess distribution and taxed as ordinary income under the special tax rules described above (assuming that the PFIC rules apply and not the CFC rules).

Subject to a special limitation for individual U.S. Noteholders that have held the Henley Series I Notes for more than one year, if the Issuer were treated as a CFC and a U.S. Noteholder were treated as a U.S. 10 per cent. Shareholder therein, then any gain realised by such Henley Series I Noteholder upon the disposition of Henley Series I Notes would be treated as ordinary income to the extent of the U.S. Noteholder's pro rata share of current and accumulated earnings and profits of the Issuer and any of its subsidiaries. In this respect, earnings and profits would not include any amounts previously taxed pursuant to the CFC rules.

### **3.6 Foreign Currency Gain or Loss**

A U.S. Noteholder that recognises income from the Henley Series I Notes under the QEF or CFC rules discussed above will recognise foreign currency gain or loss attributable to movement in foreign exchange rates between the date when it recognised income under those rules and the date when the income actually is distributed. Any such foreign currency gain or loss will be treated as ordinary income or loss from the same source as the associated income inclusion.

A U.S. Noteholder that purchases Henley Series I Notes with previously owned foreign currency generally will recognise foreign currency gain or loss in an amount equal to any difference between the U.S. Noteholder's tax basis in the foreign currency and the U.S. Dollar value of the foreign currency at the spot rate on the date the Henley Series I Notes are purchased. A U.S. Noteholder that receives foreign currency upon the sale or other disposition of the Henley Series I Notes generally will realise an amount equal to the U.S. dollar value of the foreign currency on the date of sale. A U.S. Noteholder will have a tax basis in the foreign currency received equal to the U.S. dollar amount realised. Any gain or loss realised by a U.S. Noteholder on a subsequent conversion of the foreign currency for a different amount will be foreign currency gain or loss.

### **3.7 Transfer and Other Reporting Requirements**

In general, U.S. Noteholders who acquire Henley Series I Notes for cash may be required to file a Form 926 with the IRS and to supply certain additional information to the IRS if (i) such U.S. Noteholder owns (directly or indirectly) immediately after the transfer, at least 10 per cent. of the Henley Series I Notes or (ii) the transfer when aggregated with all related transfers under applicable regulations, exceeds US\$100,000. In addition, a U.S. Noteholder that owns (actually or constructively) at least 10 per cent. of the Henley Series I Notes (and each officer or director of the Issuer that is a U.S. citizen or resident) may be required to file an information return on IRS Form 5471.

Prospective investors in the Henley Series I Notes should consult with their own tax advisers regarding whether they are required to file IRS Form 8886 in respect of the Henley Series I Notes. Such filing generally will be required if such investors file U.S. federal income tax returns or information returns and recognise losses in excess of a specified threshold. Such filing will also generally be required by a U.S. Noteholder if the Issuer both participates in certain types of transactions that are treated as "reportable transactions," such as a transaction in which its loss exceeds a specified threshold, and either (x) such U.S. Noteholder owns 10 per cent. or more of the aggregate amount of the Henley Series I Notes and makes a QEF election with respect to the Issuer or (y) the Issuer is treated as a CFC and such U.S. Noteholder is a "US Shareholder" (as defined above) of the Issuer. If the Issuer does participate in a reportable transaction, it will make reasonable efforts to make such information available.

Certain U.S. Noteholders will be subject to reporting obligations with respect to their Henley Series I Notes if they do not hold them in an account maintained by a financial institution and the aggregate value of their Henley Series I Notes and certain other "specified foreign financial assets" exceeds certain U.S. dollar thresholds.

U.S. Noteholders should consult their own tax advisers regarding reporting requirements in respect of the Henley Series I Notes. Significant penalties can apply if a U.S. Noteholder is required to disclose its Henley Series I Notes or file a form and fails to do so.

### **3.8 U.S. Tax Treatment of Non-U.S. Noteholders**

Subject to the discussions below under "*Information Reporting and Backup Withholding*" and "*Tax Considerations – Foreign Account Tax Compliance Act Withholding*", payments on a Henley Series I Note to a non-U.S. Noteholder and gain realised on the sale, exchange or retirement of a Note by a non-

U.S. Noteholder, will not be subject to U.S. federal income or withholding tax, unless (a) such income is effectively connected with a trade or business conducted by such non-U.S. Noteholder in the United States; or (b) in the case of federal income tax imposed on gain, such non-U.S. Noteholder is a non-resident alien individual who holds a Henley Series I Note as a capital asset and is present in the United States for 183 days or more in the taxable year of sale and certain other conditions are satisfied.

### 3.9 Information Reporting and Backup Withholding

Payments in respect of a Henley Series I Note made within the United States or by a U.S. payor or U.S. middleman to a U.S. person (other than a corporation or other exempt recipient) will be reported to the IRS. Under the Code, a U.S. person may be subject, under certain circumstances, to "backup withholding tax" with respect to interest and principal on a Henley Series I Note or the gross proceeds from the sale of a Henley Series I Note paid within the United States or by a U.S. middleman or United States payor to a U.S. person. Backup withholding tax generally applies only if the U.S. person: (a) fails to furnish its social security or other taxpayer identification number within a reasonable time after the request therefore; (b) furnishes an incorrect taxpayer identification number; (c) is notified by the IRS that it has failed to properly report required information; or (d) fails, under certain circumstances, to provide a certified statement, signed under penalty of perjury, that it has furnished a correct taxpayer identification number and has not been notified by the IRS that it is subject to backup withholding tax for failure to report interest and dividend payments.

Non-U.S. Noteholders or, in certain cases, their beneficial owners may be required to comply with certification procedures to establish that they are not U.S. Noteholders in order to avoid information reporting and backup withholding tax.

Backup withholding is not an additional tax. The amount of any backup withholding collected from a payment will be allowed as a credit against the recipient's U.S. federal income tax liability and may entitle the recipient to a refund, so long as the required information is properly furnished to the IRS. Henley Series I Noteholders should consult their own tax advisers about any additional reporting requirements that may arise as a result of their purchasing, holding or disposing of Henley Series I Notes.

THE DISCUSSION ABOVE IS A GENERAL SUMMARY. IT DOES NOT COVER ALL TAX MATTERS THAT MAY BE OF IMPORTANCE TO A PARTICULAR NOTEHOLDER. EACH PROSPECTIVE NOTEHOLDER IS STRONGLY URGED TO CONSULT ITS OWN TAX ADVISER ABOUT THE TAX CONSEQUENCES OF AN INVESTMENT IN THE NOTES UNDER THE NOTEHOLDER'S OWN CIRCUMSTANCES.

## 4. TAX CONSIDERATIONS: FOREIGN ACCOUNT TAX COMPLIANCE ACT

FATCA imposes a reporting regime and potentially a 30 per cent. withholding tax with respect to certain payments to (i) any non-US financial institution (a "foreign financial institution", or "**FFI**" (as defined by FATCA)) that does not become a "**Participating FFI**" by entering into an agreement with the IRS to provide the IRS with certain information in respect of its account holders and investors or is not otherwise exempt from or in deemed compliance with FATCA and (ii) any investor (unless otherwise exempt from FATCA) that does not provide information sufficient to determine whether the investor is a U.S. person or should otherwise be treated as holding a "United States account" of the relevant FFI (a **Recalcitrant Noteholder**). It is expected that each of the Issuer and NP ELM will be classified as an FFI.

The withholding regime is currently in effect for payments from sources within the United States and will apply to "foreign passthru payments" (a term not yet defined) no earlier than 1 January 2019.

The United States and a number of other jurisdictions have announced their intention to negotiate intergovernmental agreements to facilitate the implementation of FATCA (each, an **IGA**). Pursuant to FATCA and the "Model 1" and "Model 2" IGAs released by the United States, an FFI in an IGA signatory country could be treated as a "**Reporting FI**" not subject to withholding under FATCA on any payments it receives. Further, an FFI in an IGA jurisdiction generally would not be required to withhold under FATCA or an IGA (or any law implementing an IGA) (any such withholding being **FATCA Withholding**) from payments it makes. Under each Model IGA, a Reporting FI would still be required to report certain information in respect of its account holders and investors to its home government or to the IRS. The United States and Ireland have entered into an agreement (the **US-Ireland IGA**) based largely on the Model 1 IGA.

Provided that the Issuer is treated as a Reporting FI pursuant to the US-Ireland IGA, the Issuer would not anticipate being obliged to deduct any FATCA Withholding on payments it makes. There can be no assurance, however, that the Issuer will be treated as a Reporting FI, or that it would in the future not be required to deduct FATCA Withholding from payments it makes. Accordingly, the Issuer and any financial institutions through which payments on the Henley Series I Notes are made may be required to withhold FATCA Withholding if (i) any FFI through or to which payment on such Henley Series I Notes is made is not a Participating FFI, a Reporting FI, or otherwise exempt from or in deemed compliance with FATCA or (ii) a Henley Series I Noteholder is a Recalcitrant Noteholder.

Whether as a Reporting FI or Participating FFI, the Issuer expects to require each Henley Series I Noteholder to provide certifications and identifying information about itself and its beneficial owners in order to enable the Issuer to identify and report on the Henley Series I Noteholder and certain of the Henley Series I Noteholder's direct and indirect U.S. beneficial owners to the IRS or the Irish Revenue Commissioners. Further, the Henley Series I Noteholder will be required to permit the Issuer to share such information with the relevant taxing authority. Although certain exceptions to these disclosure requirements could apply, each Henley Series I Noteholder should assume that if it fails to provide the required information, the Issuer (or an Intermediary) may be compelled to force the sale of the Henley Series I Noteholder's Henley Series I Notes (and such sale could be for less than its then fair market value).

FATCA is particularly complex and its application is uncertain at this time. The above description is based in part on regulations, official guidance and the US-Ireland IGA, all of which are subject to change or may be implemented in a materially different form. Prospective investors should consult their tax advisers on how these rules may apply to the Issuer and to payments they may receive in connection with the Henley Series I Notes.

## TRANSFER RESTRICTIONS

### Transfer Restrictions

Each purchaser or transferee of a Henley Series I Note will be required, to represent, warrant and agree on an ongoing basis as follows:

*Status.* The purchaser:

- (a) is a Qualifying Noteholder and is either (a) a U.S. Person that is (i) an "accredited investor" as defined in paragraph (1), (2), (3) or (7) of Rule 501(a) under the Securities Act and QP; or (ii) an "accredited investor" as defined in Rule 501(a) under the Securities Act and Knowledgeable Employee; or (b) a non U.S. Person (in compliance with Regulation S under the Securities Act); and
- (b) is not at any time it receives interest or any other distribution under the Henley Series I Notes, in relation to the Issuer:
  - (i) a company which directly or indirectly:
    - (A) controls the Issuer;
    - (B) is controlled by the Issuer, or
    - (C) is controlled by a third company which also directly or indirectly controls the Issuer,with "control" for these purposes meaning the power of a person to secure via the holding of shares or voting power or otherwise that the company's affairs are controlled in accordance with that person's wishes; or
  - (ii) a person, or persons who are connected with each other:
    - (A) from whom the Issuer acquired assets, or
    - (B) to whom the Issuer has made loans or advances, or
    - (C) with whom the Issuer has entered into swap agreements,

where the aggregate value of such assets, loans, advances or swap agreements represent not less than 75 per cent of the aggregate value of the Qualifying Assets of the Issuer.

*Limitations on Resale.* The purchaser agrees on its own behalf and on behalf of any account for which it is purchasing, to offer, sell or otherwise transfer such Henley Series I Note only to a person that is an Eligible Investor purchasing for its own account or one or more accounts with respect to which it exercises sole investment discretion, each of which is an Eligible Investor.

*No Governmental Approval.* The purchaser understands that the Henley Series I Notes have not been approved or disapproved by the Securities Exchange Commission or any other governmental authority or agency of any jurisdiction, nor has the Securities Exchange Commission or any other governmental authority or agency passed upon the accuracy or adequacy of this Private Placement Memorandum. Any representation to the contrary is a criminal offence.

*Denominations.* The purchaser agrees that no Henley Series I Note (or any interest therein) may be sold, pledged or otherwise transferred in a denomination of less than the Minimum Denomination and that following any sale,

pledge or transfer, the remaining principal amount of the transfer shall either equal zero or meet the Minimum Denomination.

*Purchaser Sophistication; Non-Reliance; Suitability; Access to Information.* The purchaser (i) has such knowledge and experience in financial and business matters that the purchaser is capable of evaluating the merits and risks (including for tax, legal, regulatory, accounting and other financial purposes) of its prospective investment in the Henley Series I Notes, (ii) is financially able to bear such risk for an indefinite period of time, (iii) in making such investment is not relying on the advice or recommendations of any Transaction Party or any of their respective Affiliates and (iv) has determined that an investment in the Henley Series I Notes is suitable and appropriate for it. The purchaser has received, and has had an adequate opportunity to review the contents of, this Private Placement Memorandum. The purchaser has had access to such financial and other information concerning the Issuer and the Henley Series I Notes as it has deemed necessary to make its own independent decision to purchase such Henley Series I Notes, including the opportunity, at a reasonable time prior to its purchase of such Henley Series I Notes, to ask questions and receive answers concerning the Issuer and the terms and conditions of the offering of the Henley Series I Notes.

*Limited Liquidity.* The purchaser understands that there is no market for the Henley Series I Notes and that no assurance can be given as to the liquidity of any trading market for the Henley Series I Notes and that it is unlikely that a trading market for the Henley Series I Notes will develop. It further understands that the Issuer is under no obligation to do so and, following the commencement of any market-making, may discontinue the same at any time. Accordingly, the purchaser must be prepared to hold the Henley Series I Notes for an indefinite period of time or until the time of their stated maturity.

*Investment Company Act.* The purchaser agrees that no sale, pledge or other transfer of a Henley Series I Note (or any interest therein) may be made if such transfer would have the effect of requiring the Issuer to register as an investment company under the Investment Company Act.

*Certain Transfers Void.* The purchaser agrees that (i) any sale, pledge or other transfer of a Henley Series I Note (or any interest therein) made in violation of the transfer restrictions contained in this Private Placement Memorandum and in the Henley Series I Trust Deed, or made based upon any false or inaccurate representation made by the purchaser or a transferee to the Issuer, will be void and of no force or effect and (ii) none of the Issuer, the Trustee or the Registrar has any obligation to recognise any sale, pledge or other transfer of a Henley Series I Note (or any interest therein) made in violation of any such transfer restriction or made based upon any such false or inaccurate representation.

*ERISA.* With respect to acquiring or holding a Henley Series I Note (or any interest therein) (i) (A) it will represent in an ERISA Certificate (substantially in the form provided in Annex A to this Private Placement Memorandum) whether or not, for so long as it holds such Henley Series I Note or any interest therein, it is, or is acting on behalf of, a Benefit Plan Investor, (B) it will represent in an ERISA Certificate (substantially in the form provided in Annex A to this Private Placement Memorandum) whether or not, for so long as it holds such Henley Series I Note or any interest therein, it is a Controlling Person and (C) that (1) if it is, or is acting on behalf of, a Benefit Plan Investor, its acquisition, holding and disposition of such Henley Series I Note (or any interest therein) will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code and (2) if it is a governmental, church, non-U.S. or other plan, (x) it is not, and for so long as it holds such Henley Series I Note or any interest therein will not be, subject to any federal, state, local, non-U.S. or other law or regulation that could cause the underlying assets of the Issuer to be treated as assets of the Henley Series I Noteholder (or the holder of any interest therein) by virtue of its interest and thereby subject the Issuer (or other persons responsible for the investment and operation of the Issuer's assets) to any Similar Law and (y) its acquisition, holding and disposition of such Henley Series I Note (or any interest therein) will not constitute or result in a violation of any Similar Law, and (ii) that it will agree to certain transfer restrictions regarding its interest in such Henley Series I Note. Any purported transfer of the Henley Series I Notes in violation of the requirements set forth in this paragraph or without the written consent of the Issuer shall be null and void *ab initio* and the acquiror understands that the Issuer will have the right to cause the sale

of such Henley Series I Notes to another acquiror that complies with the requirements of this paragraph in accordance with the terms of the Henley Series I Trust Deed.

*Legend.* The purchaser understands and agrees that a legend in substantially the following form will be placed on each certificate representing any Henley Series I Notes initially sold unless the Issuer determines otherwise in compliance with applicable law, it being understood and agreed that the receipt of this Private Placement Memorandum by initial offerees shall constitute sufficient notice of the transfer restrictions set out in the legend:

THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE **SECURITIES ACT**), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER RELEVANT JURISDICTION, AND THE ISSUER HAS NOT BEEN REGISTERED UNDER THE UNITED STATES INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE **INVESTMENT COMPANY ACT**). THE NOTES MAY BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED (I) TO U.S. PERSONS OR WITHIN THE UNITED STATES TO PERSONS WHO ARE EITHER (A) BOTH “ACCREDITED INVESTORS” (**ACCREDITED INVESTORS**) (AS DEFINED IN PARAGRAPH (1), (2), (3) OR (7) OF RULE 501(a) OF REGULATION D UNDER THE SECURITIES ACT) AND “QUALIFIED PURCHASERS” (“**QPs**”) FOR THE PURPOSE OF SECTION 3(c)(7) OF THE INVESTMENT COMPANY ACT OR (B) BOTH “ACCREDITED INVESTORS” (AS DEFINED IN RULE 501(a) OF REGULATION D UNDER THE SECURITIES ACT AND “KNOWLEDGEABLE EMPLOYEES” AS DEFINED IN RULE 3C-5 UNDER THE INVESTMENT COMPANY ACT, IN EACH CASE FOR ITS OWN ACCOUNT FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO THE DISTRIBUTION THEREOF (EXCEPT IN ACCORDANCE WITH REGULATION D) OR (III) TO NON U.S. PERSONS (IN COMPLIANCE WITH REGULATION S UNDER THE SECURITIES ACT), IN EACH CASE (A) IN A PRINCIPAL AMOUNT OF NOT LESS THAN THE DENOMINATION FOR THE PURCHASER AND FOR EACH ACCOUNT FOR WHICH IT IS ACTING, (B) IN COMPLIANCE WITH THE CERTIFICATION AND OTHER REQUIREMENTS SPECIFIED IN THE SERIES III TRUST DEED REFERRED TO HEREIN AND (C) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES AND ANY OTHER RELEVANT JURISDICTION. NO TRANSFER OF THIS NOTE (OR ANY INTEREST HEREIN) MAY BE MADE (AND NEITHER THE TRUSTEE NOR THE REGISTRAR WILL RECOGNISE ANY SUCH TRANSFER) IF (A) SUCH TRANSFER WOULD BE MADE TO A TRANSFEREE WHO IS A U.S. PERSON OR IS IN THE UNITED STATES THAT IS NOT BOTH AN ACCREDITED INVESTOR AND QP, (B) SUCH TRANSFER WOULD HAVE THE EFFECT OF REQUIRING THE ISSUER TO REGISTER AS AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OR (C) SUCH TRANSFER WOULD BE MADE TO A PERSON THAT IS OTHERWISE UNABLE TO MAKE THE CERTIFICATIONS AND REPRESENTATIONS DEEMED TO BE MADE BY SUCH PERSON IN THE SERIES III TRUST DEED REFERRED TO HEREIN. ACCORDINGLY, AN INVESTOR IN THIS NOTE MUST BE PREPARED TO BEAR THE ECONOMIC RISK OF THE INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. ANY TRANSFER IN VIOLATION OF THE FOREGOING WILL BE OF NO FORCE AND EFFECT, WILL BE VOID *AB INITIO*, AND WILL NOT OPERATE TO TRANSFER ANY RIGHTS TO THE PURCHASER OR TRANSFEREE, NOTWITHSTANDING ANY INSTRUCTIONS TO THE CONTRARY TO THE ISSUER, THE TRUSTEE OR ANY INTERMEDIARY. EACH PURCHASER OF THIS NOTE OR ANY INTEREST HEREIN AGREES THAT THE ISSUER MAY RECEIVE A LIST OF PARTICIPANTS HOLDING POSITIONS IN ITS SECURITIES FROM ONE OR MORE BOOK-ENTRY DEPOSITORY AND THAT IT WILL DELIVER TO EACH PURCHASER OF THIS NOTE OR ANY INTEREST HEREIN A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

EACH PURCHASER OR TRANSFEREE OF THIS NOTE (OR ANY INTEREST HEREIN) WILL BE REQUIRED TO REPRESENT AND WARRANT IN WRITING TO THE ISSUER (A) WHETHER OR NOT, FOR SO LONG AS IT HOLDS THIS NOTE OR ANY INTEREST HEREIN, IT IS, OR IS ACTING ON BEHALF OF, A BENEFIT PLAN INVESTOR, (B) WHETHER OR NOT, FOR SO LONG AS IT HOLDS THIS NOTE OR ANY INTEREST HEREIN, IT IS A CONTROLLING PERSON AND (C) THAT (1) IF IT IS, OR IS ACTING ON BEHALF OF, A BENEFIT PLAN INVESTOR, ITS ACQUISITION, HOLDING AND

DISPOSITION OF THIS NOTE (OR ANY INTEREST HEREIN) WILL NOT CONSTITUTE OR RESULT IN A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (**ERISA**) OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (**THE CODE**) AND (2) IF IT IS A GOVERNMENTAL, CHURCH, NON-U.S. OR OTHER PLAN, (a) IT IS NOT, AND FOR SO LONG AS IT HOLDS THIS NOTE OR ANY INTEREST HEREIN IT WILL NOT BE, SUBJECT TO ANY FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAW OR REGULATION THAT COULD CAUSE THE UNDERLYING ASSETS OF THE ISSUER TO BE TREATED AS ASSETS OF THE NOTEHOLDER (OR THE HOLDER OF ANY INTEREST HEREIN) BY VIRTUE OF ITS INTEREST AND THEREBY SUBJECT THE ISSUER (OR OTHER PERSONS RESPONSIBLE FOR THE INVESTMENT AND OPERATION OF THE ISSUER'S ASSETS) TO LAWS OR REGULATIONS THAT ARE SUBSTANTIALLY SIMILAR TO THE PROHIBITED TRANSACTION PROVISIONS OF SECTION 406 OF ERISA AND/OR SECTION 4975 OF THE CODE (**SIMILAR LAW**), AND (b) ITS ACQUISITION, HOLDING AND DISPOSITION OF THIS NOTE (OR ANY INTEREST HEREIN) WILL NOT CONSTITUTE OR RESULT IN A VIOLATION OF ANY SIMILAR LAW. EACH PURCHASER OR SUBSEQUENT TRANSFEREE, AS APPLICABLE, OF THIS NOTE WILL BE REQUIRED TO COMPLETE AN ERISA CERTIFICATE IDENTIFYING ITS STATUS AS A BENEFIT PLAN INVESTOR OR A CONTROLLING PERSON. "**BENEFIT PLAN INVESTOR**" MEANS A BENEFIT PLAN INVESTOR, AS DEFINED IN SECTION 3(42) OF ERISA, AND INCLUDES (A) AN EMPLOYEE BENEFIT PLAN (AS DEFINED IN SECTION 3(3) OF ERISA) THAT IS SUBJECT TO THE PROVISIONS OF PART 4 OF SUBTITLE B OF TITLE I OF ERISA, (B) A PLAN THAT IS SUBJECT TO SECTION 4975 OF THE CODE OR (C) ANY ENTITY WHOSE UNDERLYING ASSETS INCLUDE PLAN ASSETS BY REASON OF ANY SUCH EMPLOYEE BENEFIT PLAN OR PLAN'S INVESTMENT IN THE ENTITY. "**CONTROLLING PERSON**" MEANS A PERSON (OTHER THAN A BENEFIT PLAN INVESTOR) WHO HAS DISCRETIONARY AUTHORITY OR CONTROL WITH RESPECT TO THE ASSETS OF THE ISSUER OR ANY PERSON WHO PROVIDES INVESTMENT ADVICE FOR A FEE (DIRECT OR INDIRECT) WITH RESPECT TO SUCH ASSETS, OR ANY AFFILIATE OF ANY SUCH PERSON. AN "**AFFILIATE**" OF A PERSON INCLUDES ANY PERSON, DIRECTLY OR INDIRECTLY THROUGH ONE OR MORE INTERMEDIARIES, CONTROLLING, CONTROLLED BY OR UNDER COMMON CONTROL WITH THE PERSON. "**CONTROL**" WITH RESPECT TO A PERSON OTHER THAN AN INDIVIDUAL MEANS THE POWER TO EXERCISE A CONTROLLING INFLUENCE OVER THE MANAGEMENT OR POLICIES OF SUCH PERSON. ANY PURPORTED TRANSFER OF THE NOTES IN VIOLATION OF THE REQUIREMENTS SET FORTH IN THIS PARAGRAPH SHALL BE NULL AND VOID AB INITIO AND THE ACQUIROR UNDERSTANDS THAT THE ISSUER WILL HAVE THE RIGHT TO CAUSE THE SALE OF SUCH NOTES TO ANOTHER ACQUIROR THAT COMPLIES WITH THE REQUIREMENTS OF THIS PARAGRAPH IN ACCORDANCE WITH THE TERMS OF THE SERIES III TRUST DEED.

NO TRANSFER OF THIS NOTE OR ANY INTEREST HEREIN WILL BE PERMITTED, AND THE ISSUER WILL NOT RECOGNISE ANY SUCH TRANSFER, IF IT WOULD CAUSE 25 PER CENT. OR MORE OF THE TOTAL VALUE OF THE SERIES III NOTES TO BE HELD BY BENEFIT PLAN INVESTORS, DISREGARDING SERIES III NOTES (OR INTERESTS THEREIN) HELD BY CONTROLLING PERSONS (**25 PER CENT. LIMITATION**).

THE ISSUER HAS THE RIGHT, UNDER THE SERIES III TRUST DEED, TO COMPEL ANY BENEFICIAL OWNER OF A NOTE WHO HAS MADE OR HAS BEEN DEEMED TO MAKE A PROHIBITED TRANSACTION, BENEFIT PLAN INVESTOR, CONTROLLING PERSON OR SIMILAR LAW REPRESENTATION THAT IS SUBSEQUENTLY SHOWN TO BE FALSE OR MISLEADING OR WHOSE OWNERSHIP OTHERWISE CAUSES A VIOLATION OF THE 25 PER CENT. LIMITATION TO SELL ITS INTEREST IN THE NOTE, OR MAY SELL SUCH INTEREST ON BEHALF OF SUCH OWNER.

*Due Authorisation; Capacity.* If the purchaser is not a natural person, the purchaser has the power and authority to enter into each agreement required to be executed and delivered by or on behalf of the purchaser in connection with its purchase of Henley Series I Notes and to perform its obligations thereunder and consummate

the transactions contemplated thereby, and the person signing any such documents on behalf of the purchaser has been duly authorised to execute and deliver such documents and each other document required to be executed and delivered by the purchaser in connection with its purchase of Henley Series I Notes. If the purchaser is an individual, the purchaser has all requisite legal capacity to acquire and hold the Henley Series I Notes and to execute, deliver and comply with the terms of each of the documents required to be executed and delivered by the purchaser in connection with the subscription for the Henley Series I Notes. Such execution, delivery and compliance by the purchaser does not conflict with, or constitute a default under, any instruments governing the purchaser, any applicable law, regulation or order, or any material agreement to which the purchaser is a party or by which the purchaser is bound.

*Certain Tax Matters.* The purchaser understands that the Issuer may require certification acceptable to it (i) to permit the Issuer to make payments to it without, or at a reduced rate of, withholding, (ii) to enable the Issuer to qualify for a reduced rate of withholding in any jurisdiction from or through which the Issuer receives payments on its assets or (iii) to enable the Issuer to comply with any tax information reporting obligations (including FATCA). The purchaser agrees to provide any such certification that is requested by the Issuer.

*Reliance on Representations, etc.* The purchaser acknowledges that the Issuer and others will rely upon the truth and accuracy of the foregoing acknowledgments, representations and agreements and agrees that, if any of the acknowledgments, representations or warranties made or deemed to have been made by it in connection with its purchase of the Henley Series I Notes are no longer accurate, the purchaser will promptly notify the Issuer.

### **Transfer and Exchange**

Transfers of the Henley Series I Notes are subject to certain additional restrictions set forth in the Henley Series I Trust Deed. In particular, to enforce the restrictions on transfers of the Henley Series I Notes the Henley Series I Trust Deed gives the Issuer the right to force the sale of any Henley Series I Note or interest in a Henley Series I Note held by a person who is not an Eligible Investor.

## GENERAL INFORMATION

1. Application has been made for the Henley Series I Notes to be admitted to the Official List of Euronext Dublin.
2. The Issuer has obtained all necessary consents, approvals and authorisations in Ireland in connection with the issue and performance of the Henley Series I Notes. The issue of the Henley Series I Notes was authorised by a resolution adopted by the Board on 19 December 2018.
3. Following the date of the final Private Placement Memorandum, copies of the Issuer's and NP ELM's constitutions, the resolutions of the Board authorising the issue of the Henley Series I Notes, the Henley Series I Trust Deed and the Agency Agreement and the resolutions of the NP ELM Board authorising the issue of the Henley Series I Investment Notes will be available for inspection in physical form at the offices of the Collateral Administrator, the Issuer and NP ELM during normal business hours, so long as any Henley Series I Notes are Outstanding.
4. Copies of the latest annual accounts of the Issuer and NP ELM may be obtained, and copies of the Henley Series I Trust Deed and the Agency Agreement will be available for inspection in physical form at the specified offices of the Registrar and the registered office of the Issuer during normal business hours, so long as any Henley Series I Notes are Outstanding.
5. The Issuer and NP ELM each represent that there has been no material adverse change in their financial position or prospects since 31 December, 2017. There has been no significant change in the financial or trading position of NP ELM since 31 December, 2017.
6. The Issuer and NP ELM are not, and have not since incorporation, been involved in any legal, arbitration or governmental proceedings, nor, so far as the Issuer or NP ELM is aware, is any such legal, arbitration or governmental proceedings involving it pending or threatened that could impact the Issuer's or NP ELM's financial position or profitability.
7. Arthur Cox Listings Services Limited is acting solely in its capacity as listing agent for the Issuer in relation to the Henley Series I Notes and is not itself seeking admission of the Henley Series I Notes to the Official List of Euronext Dublin.

## PLAN OF DISTRIBUTION

The introduction to this disclaimer is relevant to all recipients of this Private Placement Memorandum. In addition country-specific sections are also relevant to recipients in those jurisdictions.

This Private Placement Memorandum is intended to provide information about investments and investment services to professional investors and certain sophisticated investors who are familiar with and capable of evaluating the merits and risks associated with investments of the kind described. The products and services to which this Private Placement Memorandum relates are only available to such persons and any other persons should not act on the Private Placement Memorandum or rely on it. Nothing in the disclaimer excludes any liability which is not permitted to be excluded by applicable law.

No action has been or will be taken by the Issuer that would permit a public offering of the Henley Series I Notes or the possession or distribution of this Private Placement Memorandum or any other offering material in relation to the Henley Series I Notes in any jurisdiction where action is required for such purpose. No offers, sales or deliveries of any Henley Series I Notes, or distribution of this Private Placement Memorandum or any other offering materials relating to the Henley Series I Notes, may be made in or from any jurisdiction except in circumstances which will result in compliance with any applicable laws and regulations (including as stated in the section entitled "*Reliance on this Private Placement Memorandum*" above, not to retail investors as defined in such section and will not impose any obligations on the Issuer, the Joint Placement Agents, the Bookrunner or the Joint Arrangers) and will not impose any obligations on the Issuer.

Any investments referred to may not be registered with any regulator, regulatory body or similar organisation or institution in any jurisdiction. Potential investors should verify whether products are listed on any stock exchange. Before making an investment, you should consider taking independent professional advice about the unregistered and potentially unlisted status of any product.

The Issuer has agreed to comply with the following selling restrictions:

### **Bahrain**

This Private Placement Memorandum has not been approved by the Central Bank of Bahrain which takes no responsibility for its contents. The Issuer has represented and agreed that no offer to the public to purchase the Henley Series I Notes will be made in the Kingdom of Bahrain and this Private Placement Memorandum is intended to be read by the addressee only and will not be passed to, issued to, or shown to the public generally.

### **Belgium**

The Issuer has acknowledged and agreed that the offering of Henley Series I Notes has not been and will not be notified to the Belgian Financial Services and Markets Authority (*autoriteit voor financiële diensten en markten/autorité des services et marchés financiers*) nor has this Private Placement Memorandum been, nor will it be, approved by the Belgian Financial Services and Markets Authority. The Henley Series I Notes may not be distributed in Belgium by way of an offer of the Henley Series I Notes to the public, as defined in Article 3, §1 of the Act of 16 June 2006 relating to Public Offers of Investment Instruments, as amended or replaced from time to time and taking into account the provisions of Directive 2010/73/EU that are sufficiently clear, precise and unconditional to be capable of vertical direct effect, save in those circumstances (commonly called **private placement**) set out in Article 3 §2 of the Act of 16 June 2006 relating to public offers of investment instruments, as amended or replaced from time to time and taking into account the provisions of Directive 2010/73/EU that are sufficiently clear, precise and unconditional to be capable of vertical direct effect. This Private Placement Memorandum may be distributed in Belgium only to such investors for their personal use and exclusively for the purposes of this offering of Henley Series I Notes. Accordingly, this Private Placement Memorandum may not be used for any other purpose nor passed on to any other investor in Belgium. The Issuer has represented and agreed that it will not:

- (i) offer for sale, sell or market the Henley Series I Notes in Belgium otherwise than in conformity with the Act of 16 June 2006 taking into account the provisions of Directive 2010/73/EU that are sufficiently clear, precise and unconditional to be capable of vertical direct effect; and
- (ii) offer for sale, sell or market the Henley Series I Notes to any person qualifying as a consumer within the meaning of Article 1.3 of the Law of 6 April 2010 on trade practices and consumer protection, as modified, otherwise than in conformity with such law and its implementing regulations.

### **Cayman Islands**

The Issuer has represented and agreed that it will not make any invitation to the public in the Cayman Islands to subscribe for the Henley Series I Notes.

### **People's Republic of China**

The Issuer has represented and agreed that neither it nor any of its affiliates has offered or sold or will offer or sell any of the Henley Series I Notes in the People's Republic of China (excluding Hong Kong, Macau and Taiwan) as part of the initial distribution of the Henley Series I Notes.

### **Denmark**

The Issuer has represented and agreed that it has not offered or sold and will not offer or sell, directly or indirectly, any of the Henley Series I Notes to the public in Denmark unless in accordance with the Danish Securities Trading Act, Consolidation Act No. 831 of 12 June 2014 as amended from time to time and any orders issued thereunder.

For the purposes of this provision, an offer of the Henley Series I Notes in Denmark means the communication in any form and by any means of sufficient information on the terms of the offer and the Henley Series I Notes to be offered so as to enable an investor to decide to purchase or subscribe for the Henley Series I Notes.

### **Dubai**

This Private Placement Memorandum relates to the Issuer which is not subject to any form of regulation or approval by the Dubai Financial Services Authority (the **DFSA**). The DFSA has no responsibility for reviewing or verifying any Private Placement Memorandum or other documents in connection with the Issuer. Accordingly, the DFSA has not approved this Private Placement Memorandum or any other associated documents or taken any steps to verify the information set out in this Private Placement Memorandum, and has no responsibility for it. The Henley Series I Notes to which this Private Placement Memorandum relates may be illiquid and/or subject to restrictions on their resale. The Henley Series I Notes will not be offered to retail investors. Prospective purchasers should conduct their own due diligence on the Henley Series I Notes. If you do not understand the contents of this Private Placement Memorandum you should consult an authorised financial adviser.

## European Economic Area

*Prohibition of Sales to EEA Retail Investors:* it has not offered, sold or otherwise made available and will not offer, sell or otherwise make available any Henley Series I Notes to any retail investor in the European Economic Area. For the purposes of this provision:

- (i) the expression “retail investor” means a person who is one (or more) of the following:
  - (A) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU (as amended, **MiFID II**); or
  - (B) a customer within the meaning of Directive 2016/97/EU (as amended, the **Insurance Distribution Directive**), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; and
- (ii) the expression “offer” includes the communication in any form and by any means of sufficient information on the terms of the offer and the Henley Series I Notes to be offered so as to enable an investor to decide to purchase or subscribe the Henley Series I Notes.

## Finland

This Private Placement Memorandum does not constitute an offer to the public in Finland. The Henley Series I Notes may not be offered or sold in Finland by means of any document to any persons other than "Professional Investors" as defined by the Finnish Mutual Funds Act (*Sijoitusrahastolaki* 29.1.1999/48), as amended. No action has been taken to authorise an offering of the Henley Series I Notes to the public in Finland and the distribution of this Private Placement Memorandum is not authorised by the Financial Supervisory Authority in Finland. This Private Placement Memorandum is strictly for private use by its holder and may not be passed on to third parties or otherwise publicly distributed. Subscriptions will not be accepted from any persons other than the person to whom this Private Placement Memorandum has been delivered by the Issuer or its representative. This Private Placement Memorandum may not include all the information that is required to be included in a prospectus in connection with an offering to the public.

## France

Any person who is in possession of this Private Placement Memorandum is hereby notified that no action has or will be taken that would allow an offering of the Henley Series I Notes in France and neither the Private Placement Memorandum nor any offering material relating to the Henley Series I Notes have been submitted to the *Autorité des Marchés Financiers* (**AMF**) for prior review or approval. Accordingly, the Henley Series I Notes may not be offered, sold, transferred or delivered and neither this Private Placement Memorandum nor any offering material relating to the Henley Series I Notes may be distributed or made available (in whole or in part) in France, directly or indirectly, except as permitted by French law and regulation.

The Issuer has represented and agreed that:

- (i) the Henley Series I Notes have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France.
- (ii) neither this Private Placement Memorandum nor any other offering material relating to the Henley Series I Notes has been or will be:
  - (A) released, issued, distributed or caused to be released, issued or distributed to the public in France; or

- (B) used in connection with any offer for subscription or sale of the Henley Series I Notes to the public in France.
- (iii) such offers, sales and distributions will be made in France only:
  - (A) to qualified investors (*investisseurs qualifiés*) and/or to a restricted circle of investors (*cercle restreint d'investisseurs*), all other than individuals, in each case investing for their own account, all as defined in, and in accordance with, Articles L.411-2, D.411- 1, and L.533-20 of the French *Code Monétaire et Financier* (**CMF**);
  - (B) to investment services providers authorised to engage in portfolio management on behalf of third parties; or
  - (C) in a transaction that, in accordance with Article L.411-2 of the CMF and Article 211- 2 of the *Règlement Général* of the AMF, does not constitute a public offer.

## Hong Kong

The contents of this Private Placement Memorandum have not been reviewed by any regulatory authority in Hong Kong. The Issuer has therefore represented and agreed that:

- (i) It has not offered or sold and will not offer or sell in Hong Kong, by means of any document, any Henley Series I Notes (except for Henley Series I Notes which are a 'structured product' as defined in the Henley Series I Notes and Futures Ordinance (cap. 571) of Hong Kong) other than (a) to 'professional investors' as defined in the Securities and Futures Ordinance and any rules made under that ordinance (**professional investors**); or (b) in other circumstances which do not result in the document being a 'prospectus' as defined in the Companies Ordinance (cap. 32) of Hong Kong or which do not constitute an offer to the public within the meaning of that Ordinance; and
- (ii) It has not issued or had in its possession for the purposes of issue, and will not issue or have in its possession for the purposes of issue, whether in Hong Kong or elsewhere, any advertisement, invitation or document relating to the Henley Series I Notes, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the Securities Laws of Hong Kong) other than with respect to Henley Series I Notes which are or are intended to be disposed of only to persons outside Hong Kong or only to professional investors as defined in the Securities and Futures Ordinance and any rules made under that Ordinance.

## Ireland

The Issuer represents, warrants and undertakes that:

- (i) it will not underwrite the issue of, or place the Henley Series I Notes, otherwise than in conformity with the European Union (Markets in Financial Instruments) Regulations 2017 (as amended) of Ireland (the **MiFID II Regulations**) including, without limitation, Regulation 5 (Requirement for authorisation (and certain provisions concerning MTFs and OTFs)) thereof, or any rules or codes of conduct made under the MiFID II Regulations, and the provisions of the Investor Compensation Act 1998 (as amended);
- (ii) it will not underwrite the issue of, or place, the Henley Series I Notes, otherwise than in conformity with the provisions of the Irish Companies Act 2014 (as amended), the Central Bank Acts 1942 - 2017 (as amended) and any codes of practice made under Section 117(1) of the Central Bank Act 1989 (as amended);
- (iii) it will not underwrite the issue of, or place, or do anything in the Ireland in respect of the Henley Series I Notes otherwise than in conformity with the provisions of the Prospectus (Directive 2003/71/EC)

Regulations 2005 (as amended) and any rules issued by the Central Bank under Section 1363 of the Irish Companies Act 2014 (as amended); and

- (iv) it will not underwrite the issue of, place or otherwise act in the Ireland in respect of the Henley Series I Notes, otherwise than in conformity with the provisions of the Market Abuse Regulation (EU 596/2014) (as amended), the European Union (Market Abuse) Regulations 2016 (S.I. 349 of 2016) (as amended) of Ireland and any rules and guidance issued by the Central Bank under Section 1370 of the Irish Companies Act 2014 (as amended).

## Italy

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

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

Any offer, sale or delivery of the Henley Series I Notes or distribution of copies of this Private Placement Memorandum or any other document relating to the Henley Series I Notes in the Republic of Italy under (i) or (ii) above must be:

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

## Japan

The Henley Series I Notes have not been and will not be registered under the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended; the "FIEA"). The Issuer has represented and agreed that it will not offer or sell any Henley Series I Notes directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (as defined under Item 5, Paragraph 1, Article 6 of the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949, as amended)), or to others for reoffering or resale, directly or indirectly, in Japan or to, or for the benefit of, a resident of Japan except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the FIEA and any other applicable laws, regulations and ministerial guidelines of Japan.

## Kuwait

By receiving this Private Placement Memorandum, the person or entity to whom it has been issued understands, acknowledges and agrees that this Private Placement Memorandum has not been approved by the Kuwait Central Bank or the Kuwait Ministry of Commerce and Industry or any authorities in Kuwait, nor has the Portfolio Adviser or any affiliates received authorization or licensing from the Kuwait Central Bank or the Kuwait Ministry of Commerce and Industry or any authorities in Kuwait to market or sell the Investments within Kuwait. Therefore, the Henley Series I Notes will not be sold in Kuwait and no services relating to an offering, including the receipt of applications or this Private Placement Memorandum or both, will be rendered within Kuwait by Portfolio Adviser or any affiliates.

## Netherlands

The Issuer has represented and agreed that it will not make an offer of the Henley Series I Notes which are the subject of the offering contemplated by this Private Placement Memorandum to the public in The Netherlands in reliance on Article 3(2) of the Prospectus Directive, unless such offer is made exclusively to legal entities which are qualified investors (as defined in the Financial Markets Supervisions Act (*Wet op het financieel toezicht*) and which includes authorised discretionary asset managers acting for the account of retail investors under a discretionary investment management contract) in The Netherlands, provided that no such offer of Henley Series I Notes shall require the Issuer to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

For the purposes of this provision, the expression an **offer of the Henley Series I Notes to the public** in relation to any Henley Series I Notes means the communication in any form and by any means of sufficient information on the terms of the offer and the Henley Series I Notes to be offered so as to enable an investor to decide to purchase or subscribe for the Henley Series I Notes, as the same may be varied in that EU member state by any measure implementing the Prospectus Directive in that EU member state and the expression **Prospectus Directive** means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 (as amended, by Directive 2010/73/EU), and includes any relevant implementing measure in The Netherlands.

## New Zealand

The Issuer has represented and agreed that: (1) it has not offered, sold or delivered and will not directly or indirectly offer, sell, or deliver any Henley Series I Note; and (2) it will not distribute any Private Placement Memorandum or advertisement in relation to any offer of Henley Series I Notes, in New Zealand other than:

- (1) to "wholesale investors" as that term is defined in clauses 3(2)(a), (c) and (d) of Schedule 1 to the Financial Markets Conduct Act 2013 of New Zealand (FMC Act), being a person who is:
  - (a) an "investment business";
  - (b) "large"; or
  - (c) a "government agency",in each case as defined in Schedule 1 to the FMC Act; and
- (2) in other circumstances where there is no contravention of the FMC Act, provided that (without limiting paragraph (1) above) Henley Series I Notes may not be offered or transferred to any "eligible investors" (as defined in the FMC Act) or any person that meets the investment activity criteria specified in clause 38 of Schedule 1 to the FMC Act.

## **Qatar**

The Issuer has represented and agreed that the Henley Series I Notes will only be offered to a limited number of investors who are willing and able to conduct an independent investigation of the risks involved in an investment in such Henley Series I Notes.

## **Saudi Arabia**

The Henley Series I Notes may only be offered and sold in the Kingdom of Saudi Arabia in accordance with Article 4 of the Investment Funds Regulations issued on December 24, 2006 (the **Regulations**). Article 4(b)(1)/(4) of the Regulations states that, if investment fund units are offered certain persons specified in the Regulations and the minimum amount payable per offeree is not less than Saudi Riyals 1 million or an equivalent amount in another currency, such offer of investment fund units shall be deemed a private placement for purposes of the Regulations. Investors are informed that Article 4(g) of the Regulations places restrictions on secondary market activity with respect to such investment fund units.

## **Singapore**

This Private Placement Memorandum has not been registered as a prospectus with the Monetary Authority of Singapore (**MAS**) nor have any arrangements described in the Private Placement Memorandum, which constitute a collective investment scheme for the purposes of the Securities and Futures Act, Chapter 289 of Singapore (**SFA**), been approved or registered with the AMS as an authorised or recognised CIS under the SFA (whether as a restricted scheme or otherwise). Accordingly, the Henley Series I Notes may not be offered or sold or made the subject of an invitation for subscription or purchase nor may this Private Placement Memorandum or any other document or material in connection with the offer or sale or invitation for subscription or purchase of any Henley Series I Notes be circulated or distributed, whether directly or indirectly, to any person in Singapore other than (a) to an institutional investor pursuant to Sections 274 and 304 of the SFA, (b) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

## **South Korea**

The Henley Series I Notes have not been registered with the Financial Services Commission of Korea for a public offering in Korea. The Issuer has therefore represented and agreed that the Henley Series I Notes have not been and will not be offered, sold or delivered directly or indirectly, or offered, sold or delivered to any person for re-offering or resale, directly or indirectly, in Korea or to any resident of Korea, except as otherwise permitted under applicable Korean Laws and regulations, including the Financial Investment Services and Capital Markets Act and the Foreign Exchange Transaction Law and the decrees and regulations thereunder.

## **Sweden**

The Issuer has confirmed and agreed that it will not, directly or indirectly, offer for subscription or purchase or issue invitations to subscribe for or buy Henley Series I Notes or distribute any draft or final document in relation to any such offer, invitation or sale except in circumstances that will not result in a requirement to prepare a prospectus pursuant to the provisions of the Swedish Financial Instruments Trading Act (*lag (1991:980) om handel med finansiella instrument*).

## **Switzerland**

The distribution of the Henley Series I Notes in Switzerland will be exclusively made to, and directed at, regulated qualified investors (the **Regulated Qualified Noteholders**), as defined in the Swiss Collective Investment Schemes Act of 23 June 2006, as amended (**CISA**) and its implementing ordinance. Accordingly, the Issuer has not been and will not be registered with the Swiss Financial Market Supervisory Authority (**FINMA**). This Private Placement Memorandum and/or any other offering materials relating to the Henley Series I Notes may be made available in Switzerland solely to Regulated Qualified Noteholders. Neither this Private Placement

Memorandum nor any other offering or marketing material relating to the Henley Series I Notes constitutes a prospectus as such term is understood pursuant to article 652a or article 1156 of the Swiss Code of Obligations.

### **Taiwan**

The Issuer has acknowledged and agreed that the Henley Series I Notes may be made available outside Taiwan for purchase by investors residing in Taiwan (either directly or through properly licensed Taiwan intermediaries acting on behalf of such investors) but may not be offered or sold in Taiwan.

The Henley Series I Notes are being made available to professional investors in the R.O.C. through bank trust departments, licensed securities brokers and/or insurance company investment linked insurance policies pursuant to the R.O.C. rules governing offshore structured products. No other offer or sale in the R.O.C. is permitted.

### **United Arab Emirates**

This Private Placement Memorandum, and the information contained herein, does not constitute, and is not intended to constitute, a public offer of securities in the United Arab Emirates. The Issuer has therefore represented and agreed that the Henley Series I Notes are only being offered to a limited number of sophisticated investors in the UAE (a) who are willing and able to conduct an independent investigation of the risks involved in an investment in such Henley Series I Notes and (b) upon their specific request. The Henley Series I Notes have not been approved by or licensed or registered with the UAE Central Bank, the Securities and Commodities Authority or any other relevant licensing authorities or governmental agencies in the UAE. The Private Placement Memorandum is for the use of the named addressee only and should not be given or shown to any other person (other than employees, agents or consultants in connection with the addressee's consideration thereof).

### **United States**

There will be no public offering of the Henley Series I Notes in the United States. The Henley Series I Notes will be offered to (A) U.S. persons that are, among other things, (i) "accredited investors" (as defined in paragraph (1), (2), (3) or (7) of Rule 501(a) of Regulation D under the Securities Act) and QPs; or (ii) "accredited investors" (as defined in Rule 501(a) of Regulation D under the Securities Act) and Knowledgeable Employees; or (B) investors that are not U.S. persons (as such term is defined in Regulation S under the Securities Act) (**Eligible Investors**).

The Henley Series I Notes have not been, and will not be, registered under the Securities Act or the securities laws of any of the states of the United States, nor is such registration contemplated. The Henley Series I Notes may not be offered, sold, transferred or delivered, directly or indirectly, in the United States or to, or for the account or benefit of, any U.S. person except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and any applicable state securities laws. Any re-offer or resale of any of the Henley Series I Notes in the United States or to persons that are not Eligible Investors may constitute a violation of U.S. law.

There is no public market for the Henley Series I Notes in the United States or elsewhere and no such market is expected to develop in the future. The Henley Series I Notes offered hereby are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act and applicable state securities law pursuant to registration or exemption therefrom. The Henley Series I Notes are being offered inside the U.S. in reliance on Regulation D promulgated under the Securities Act and Section 4(a)(2) thereof.

The Issuer has not been and will not be registered under the Investment Company Act pursuant to the provisions of Section 3(c)(7) of the Investment Company Act. Under Section 3(c)(7), a privately offered fund is excepted

from the definition of "investment company" if U.S. person security holders consist exclusively of "qualified purchasers" and the Henley Series I Notes are only offered in the U.S. on a private placement basis.

The Henley Series I Notes have not been filed with or approved by any regulatory authority of the United States or any state thereof, nor has any such regulatory authority passed upon or endorsed the merits of this offering or the accuracy or adequacy of this Private Placement Memorandum. Any representation to the contrary is unlawful.

The Henley Series I Notes referred to in this Private Placement Memorandum are not deposits and are not insured by the U.S. Federal Deposit Insurance Corporation, the U.S. Federal Reserve Board or any other U.S. or non-US governmental agency. The Issuer, NP ELM and any other feeder fund established to invest in NP ELM are not banks and each is a separate legal entity from the Portfolio Adviser and its affiliates and each other. An investment in the Henley Series I Notes referred to in this Private Placement Memorandum involves investment risks, including possible loss of principal amount invested, and is not an obligation of the Portfolio Adviser or any of its affiliates.

The Henley Series I Notes (or any interest therein) may be acquired by an investor that is a Controlling Person, a Benefit Plan Investor or acting on behalf of a Benefit Plan Investor, if such investor: (A) obtains the written consent of the Issuer and (B) provides an ERISA certificate to the Issuer as to its status as a Benefit Plan Investor or Controlling Person (substantially in the form of Annex A to this Private Placement Memorandum). A purchaser or transferee or other holder of a Henley Series I Note or any interest in such Henley Series I Note will be required to (i) represent and warrant in writing to the Issuer in an ERISA certificate (1) whether or not, for so long as it holds such Henley Series I Notes or any interest herein, it is, or is acting on behalf of, a Benefit Plan Investor, or is a Controlling Person and (2) that if it is, or is acting on behalf of, a Benefit Plan Investor, its acquisition, holding and disposition of such Henley Series I Notes (or any interest therein) will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code. If such purchaser or transferee is a governmental, church, non-U.S. plan or other plan, (x) it is not, and for so long as it holds such Henley Series I Notes or any interest therein will not be, subject to any federal, state, local, non-U.S. or other law or regulation that could cause the underlying assets of the Issuer to be treated as assets of the Henley Series I Noteholder (or the holder of any interest therein) by virtue of its interest and thereby subject the Issuer (or other persons responsible for the investment and operation of the Issuer's assets) to any Similar Law and (y) its acquisition, holding and disposition of such Henley Series I Notes (or any interest therein) will not constitute or result in a violation of any Similar Law, and (ii) agree to certain transfer restrictions regarding its interest in such Henley Series I Notes.

## **United Kingdom**

The Issuer, which is authorised and regulated by the Financial Conduct Authority, has represented and agreed that:

- (i) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 (**FSMA**)) received by it in connection with the issue or sale of the Henley Series I Notes in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer; and
- (ii) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Henley Series I Notes in, from or otherwise involving the United Kingdom.

## **Uruguay**

In Uruguay products characterized as funds are being placed relying on a private placement (*Oferta Privada*) pursuant to section 2 of law 18.627. The Henley Series I Notes are not and will not be registered with the Central

Bank of Uruguay to be publicly offered in Uruguay. The Henley Series I Notes do not qualify as an investment fund regulated by Uruguayan Law 18.627, as amended.

### **Distribution generally**

The distribution of this Private Placement Memorandum and the offering of Henley Series I Notes may be restricted in certain jurisdictions. The jurisdiction specific information contained in this Private Placement Memorandum is for general guidance only, and it is the responsibility of any person in possession of this Private Placement Memorandum and wishing to apply for Henley Series I Notes to inform themselves of, and to observe, all applicable laws and regulations of any relevant jurisdiction. Prospective investors should inform themselves, amongst other things, as to (a) the legal requirements within their own countries for the acquisition, holding or disposal of Henley Series I Notes, (b) any foreign exchange restrictions applicable to the acquisition, holding or disposal of Henley Series I Notes and (c) the income and other tax consequences which may apply in their own countries relevant to the acquisition, holding or disposal of Henley Series I Notes.

Notwithstanding the foregoing, under no circumstances may any person offer or sell Henley Series I Notes by any form of general solicitation or general advertising, including, but not limited to, any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio or any seminar or meeting whose attendees have been invited by general solicitation or general advertising.

No action has been taken in any jurisdiction that would permit the placing of Henley Series I Notes, or possession or distribution of this Private Placement Memorandum or any other offering or publicity material relating to Henley Series I Notes, in any country or jurisdiction where action for that purpose is required.

**It is the responsibility of any prospective investor to satisfy itself as to full compliance with the applicable laws or regulations of any relevant territory, including obtaining any requisite governmental or other consent and observing any formalities prescribed in such territory.**

## ANNEX A

### FORM OF ERISA AND TAX CERTIFICATE

The purpose of this ERISA and Tax Certificate (this **Certificate**) is, among other things, to (i) endeavour to ensure that less than 25 per cent. of the total value of the Henley Series I Notes issued by Napier Park Europe Loan Management Designated Activity Company (the **Issuer**) is held by (a) an employee benefit plan that is subject to the fiduciary responsibility provisions of ERISA, (b) a plan that is subject to Section 4975 of the Code or (c) any entity whose underlying assets include "plan assets" by reason of any such employee benefit plan or plan's investment in the entity (collectively, **Benefit Plan Investors**), (ii) obtain from you certain representations and agreements and (iii) provide you with certain related information with respect to the limitations on your acquisition, holding and disposition of the Henley Series I Notes. By signing this Certificate, you agree to be bound by its terms.

Please be aware that the information contained in this Certificate is not intended to constitute advice and the examples given below are not intended to be, and are not, comprehensive. You should contact your own counsel if you have any questions in completing this Certificate. Capitalised terms not defined in this Certificate shall have the meanings ascribed to them in the master definitions agreement between the Issuer and the Trustee entered into on the Issue Date.

If a box is not checked, you are agreeing that the applicable Section does not, and will not, apply to you.

1. ☐ Employee Benefit Plans Subject to ERISA or the Code. We, or the entity on whose behalf we are acting, are an "employee benefit plan" within the meaning of Section 3(3) of ERISA that is subject to the fiduciary responsibility provisions of Title I of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code.

Examples: (i) tax qualified retirement plans such as pension, profit sharing and section 401(k) plans, (ii) welfare benefit plans such as accident, life and medical plans, (iii) individual retirement accounts or "IRAs" and "Keogh" plans and (iv) certain tax-qualified educational and savings trusts.

2. ☐ Entity Holding Plan Assets. We, or the entity on whose behalf we are acting, are an entity or fund whose underlying assets include "plan assets" by reason of a Benefit Plan Investor's investment in such entity and we and any such entity are not described in Section 3 below.

Examples: (i) an insurance company separate account, (ii) a bank collective trust fund and (iii) a hedge fund or other private investment vehicle where 25 per cent. or more of the total value of any class of its equity is held by Benefit Plan Investors.

If you check Box 2, please indicate the maximum percentage of the entity or fund that will constitute "plan assets" for purposes of Title I of ERISA or Section 4975 of the Code: \_\_\_\_\_ per cent.

An entity or fund that cannot provide the foregoing percentage hereby acknowledges that for purposes of determining whether Benefit Plan Investors own less than 25 per cent. of the total value of Henley Series I Notes, 100 per cent. of the assets of the entity or fund will be treated as "plan assets."

ERISA and the regulations promulgated thereunder are technical. Accordingly, if you have any questions regarding whether you may be an entity described in this Section 2, you should consult with your counsel.

3. ☐ Insurance Company General Account. We, or the entity on whose behalf we are acting, are an insurance company purchasing the Henley Series I Notes with funds from our or their general account (i.e., the insurance company's corporate investment portfolio), whose assets, in whole or in part,

constitute "plan assets" (and will therefore be in whole or in part a Benefit Plan Investor) for purposes of 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA (the **Plan Asset Regulations**).

If you check Box 3, please indicate the maximum percentage of the insurance company general account that will constitute "plan assets" of a Benefit Plan Investor for purposes of conducting the 25 per cent. test under the Plan Asset Regulations: \_\_\_per cent.

IF YOU DO NOT INCLUDE ANY PERCENTAGE IN THE BLANK SPACE, YOU WILL BE COUNTED AS IF YOU FILLED IN 100 PER CENT. IN THE BLANK SPACE.

4. ☐ None of Sections (1) Through (3) Above Apply. We, or the entity on whose behalf we are acting, are a person that does not fall into any of the categories described in Sections (1) through (3) above. If, after the date hereof, any of the categories described in Sections (1) through (3) above would apply, we will promptly notify the Issuer of such change.
5. No Prohibited Transaction. If we checked any of the boxes in Sections (1) through (3) above, we represent, warrant and agree that our acquisition, holding and disposition of the Henley Series I Notes (or any interest therein) will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.
6. Not Subject to Similar Law and No Violation of Similar Law. If we are a governmental, church, non-U.S. or other plan, we represent, warrant and agree that (a) we are not subject to any federal, state, local, non-U.S. or other law or regulation that could cause the underlying assets of the Issuer to be treated as assets of the Henley Series I Noteholder (or the holder of any interest therein) by virtue of its interest and thereby subject the Issuer (or other persons responsible for the investment and operation of the Issuer's assets) to laws or regulations that are substantially similar to the prohibited transaction provisions of Section 406 of ERISA and/or Section 4975 of the Code, and (b) our acquisition, holding and disposition of the Henley Series I Notes (or any interest therein) will not constitute or result in a violation of any law or regulation that is substantially similar to the prohibited transaction provisions of Section 406 of ERISA and/or Section 4975 of the Code.
7. ☐ Controlling Person. We are, or we are acting on behalf of: (i) any person that has discretionary authority or control with respect to the assets of the Issuer, (ii) any person who provides investment advice for a fee (direct or indirect) with respect to such assets or (iii) any "affiliate" of any of the above persons. "Affiliate" shall have the meaning set forth in the Plan Asset Regulations. Any of the persons described in the first sentence of this Section 7 is referred to in this Certificate as a "Controlling Person."

Note: We understand that, for purposes of determining whether Benefit Plan Investors hold less than 25 per cent. of the total value of the Henley Series I Notes, the Henley Series I Notes held by Controlling Persons (other than Benefit Plan Investors) are required to be disregarded.

Compelled Disposition. We acknowledge and agree that:

- (i) if any representation that we made hereunder is or is subsequently shown to be false or misleading or our beneficial ownership otherwise causes a violation of the 25 per cent. Limitation, the Issuer shall not consent to our acquisition of any Henley Series I Notes (or interest in such Henley Series I Notes) and, if applicable, promptly after such discovery, send notice to us demanding that we transfer our Henley Series I Notes (or our interests therein) to a person that is not a Non-Permitted ERISA Noteholder within 14 days after the date of such notice;
- (ii) if we fail to transfer our Henley Series I Notes (or our interests therein), the Issuer shall have the right, without further notice to us, to sell our Henley Series I Notes or our interest in the Henley Series I Notes to a purchaser selected by the Issuer that is not a Non-Permitted ERISA Noteholder on such terms as the Issuer may choose;

- (iii) the Issuer may select the purchaser by soliciting one or more bids from one or more brokers or other market professionals that regularly deal in securities similar to the Henley Series I Notes and selling such securities to the highest such bidder. However, the Issuer may select a purchaser by any other means determined by it in its sole discretion;
  - (iv) by our acceptance of the Henley Series I Notes (or any interest therein), we agree to such limitations and to cooperate with the Issuer to effect such transfers;
  - (v) the proceeds of such sale, net of any commissions, expenses and taxes due in connection with such sale shall be remitted to us; and
  - (vi) the terms and conditions of any sale under this sub-section shall be determined in the sole discretion of the Issuer, and the Issuer shall not be liable to us as a result of any such sale or the exercise of such discretion.
8. Required Notification and Agreement. We hereby agree that we (a) will inform the Issuer of any proposed transfer by us of all or a specified portion of the Henley Series I Notes (or any interest therein) and (b) will not initiate any such transfer after we have been informed by the Issuer in writing that such transfer would cause the 25 per cent. Limitation to be exceeded.
9. Continuing Representation; Reliance. We acknowledge and agree that the representations, warranties, acknowledgments and agreements contained in this Certificate shall be deemed made on each day from the date we make such representations, warranties, acknowledgments and agreements through and including the date on which we dispose of the Henley Series I Notes (or our interests therein). We understand and agree that the information supplied in this Certificate will be used and relied upon by the Issuer to determine that Benefit Plan Investors own or hold less than 25 per cent. of the total value of the Henley Series I Notes upon any subsequent transfer of the Henley Series I Notes in accordance with the Henley Series I Trust Deed.
10. Further Acknowledgement and Agreement. We acknowledge and agree that (i) all of the assurances contained in this Certificate are for the benefit of the Issuer and Trustee as third party beneficiaries hereof, (ii) copies of this Certificate and any information contained herein may be provided to the Issuer, Trustee, Affiliates of any of the foregoing parties and to each of the foregoing parties' respective counsel for purposes of making the determinations described above and (iii) any acquisition or transfer of the Henley Series I Notes (or any interest therein) by us that is not in accordance with the provisions of this Certificate shall be null and void from the beginning, and of no legal effect.
11. Future Transfer Requirements.
- Transferee Letter and its Delivery. We acknowledge and agree that a transferee of a Henley Series I Note (or any interest therein) may acquire such Henley Series I Note (or interest therein) if such transferee: (i) obtains the written consent of the Issuer; and (ii) provides an ERISA certificate to the Issuer as to its status as a Benefit Plan Investor or Controlling Person.

**Note:** Unless you are notified otherwise, the name and address of the Issuer is as follows:  
 Napier Park Europe Loan Management Designated Activity Company, 2nd Floor, 1-2 Victoria Buildings, Haddington Road, Dublin 4, Ireland.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Certificate.

\_\_\_\_\_

[Insert Purchaser's Name]

By:

Name:

Title:

Dated:

This Certificate relates to EUR\_\_\_\_\_ of Henley Series I Notes

**REGISTERED OFFICE OF THE ISSUER**  
**Napier Park Europe Loan Management Designated Activity Company**

2nd Floor  
1-2 Victoria Buildings  
Haddington Road  
Dublin 4  
Ireland

**NP ELM**  
**NP Europe Loan Management I Designated Activity Company**

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Dublin 4  
Ireland

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<b>PRINCIPAL PAYING AGENT, ACCOUNT BANK, COLLATERAL ADMINISTRATOR AND CUSTODIAN</b>		
<b>REGISTRAR</b>		<b>TRUSTEE</b>
<b>U.S. Bank National Association</b> One Federal Street, 3rd Floor Boston Massachusetts 02110 United States	<b>Elavon Financial Services DAC</b> 125 Old Broad Street, Fifth Floor London EC2N 1AR United Kingdom	<b>U.S. Bank Trustees Limited</b> 125 Old Broad Street, Fifth Floor London EC2N 1AR United Kingdom

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