

# PROSPECTUS

## CoSMO Finance 2008-1 Limited

(incorporated in Ireland)

### Credit linked notes

€ 500,000

#### Class A1+ Floating Rate Credit Linked Notes

Issue Price: 100%

€ 500,000

#### Class A2+ Floating Rate Credit Linked Notes

Issue Price: 100%

€ 38,400,000

#### Class B Floating Rate Credit Linked Notes

Issue Price: 100%

€ 21,000,000

#### Class C Floating Rate Credit Linked Notes

Issue Price: 100%

€ 18,000,000

#### Class D Floating Rate Credit Linked Notes

Issue Price: 100%

€ 19,000,000

#### Class E Floating Rate Credit Linked Notes

Issue Price: 100%

€ 8,600,000

#### Class F Floating Rate Credit Linked Notes

Issue Price: 100%

€ 13,000,000

#### Class G Floating Rate Credit Linked Notes

Issue Price: 100%

The Class A1+, Class A2+, Class B, Class C, Class D, Class E Notes, Class F and Class G Notes (each class of Notes, a "Class", and all Classes collectively, the "Issue" or the "Notes") of CoSMO Finance 2008-1 Limited (the "Issuer") are linked to the performance of a replenishable reference pool (the "Reference Pool") of certain claims for the payment of principal and interest and certain other payment claims, in each case, including partial claims (each such claim, a "Reference Claim"), held by or for the benefit of Commerzbank Aktiengesellschaft, including its branches ("Commerzbank" or the "Bank") or any subsidiary or affiliate of Commerzbank, arising from (a) certain loans, including fixed or floating rate, amortising, bullet or annuity loans, syndicated loans, participations and sub-participations (each, a "Reference Loan"), (b) certain revolving credit facilities, including syndicated revolving credit facilities (each, a "Reference Facility") and (c) certain guarantees, including syndicated guarantees (each, a "Reference Guarantee"), in each case, to corporate entities (including financial institutions) and certain other entities, and originated, including by way of acquisition from a third party, by the Bank or a subsidiary of the Bank pursuant to its credit and collection policies and serviced by the Servicers. Certain characteristics of the Reference Claims are described herein under "DESCRIPTION OF THE REFERENCE POOL". The initial aggregate Outstanding Nominal Amount of the Reference Claims included in the Reference Pool as of the Cut-off Date was approximately EUR 1,500,000,000.

The Prospectus has been approved by the Irish Financial Services Regulatory Authority, as competent authority under Directive 2003/71/EC. The Irish Financial Services Regulatory Authority only approves this Prospectus as meeting the requirements imposed under Irish and EU law pursuant to Directive 2003/71/EC. Application has been made to the Irish Stock Exchange for the Notes to be admitted to the Official List and trading on its regulated market as defined in Article 4 (1) no. 14 of the Directive 2004/39/EC. Upon approval of the Prospectus by the Irish Financial Services Regulatory Authority, the Prospectus will be filed with the Companies Registration Office in accordance with Regulation 38(1)(b) of the Prospectus (Directive 2003/71/EC) Regulations 2005. Such approval relates only to the Notes which are to be admitted to trading on the regulated market of the Irish Stock Exchange or other regulated markets for the purposes of Directive 2004/39/EC or which are to be offered to the public in any Member State of the European Economic Area. The Issuer designates Ireland as Home Member State for the purposes of the Notes to be issued and the approval of this Prospectus. This Prospectus constitutes a prospectus for the purpose of Directive 2003/71/EC of the European Parliament and of the Council.

Commerzbank Aktiengesellschaft (in such capacity, the "Lead Manager") will purchase the Notes from the Issuer on October 7, 2008 (the "Issue Date") and will offer the Notes, from time to time, in negotiated transactions or otherwise at varying prices to be determined at the time of sale. The Class A1+ Notes, the Class A2+ Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and the Class G Notes, in whole or in part, will be placed with the Bank.

Particulars of the dates of, parties to and general nature of the material contracts are set out in various sections of this Prospectus.

## Arranger and Lead Manager

### Commerzbank Aktiengesellschaft

The date of this Prospectus is October 2, 2008.

Given the complexity of the Terms and Conditions, an investment in the Notes is suitable only for experienced investors who understand and are in a position to evaluate the risks inherent therein. **For a discussion of certain significant factors affecting investments in the Notes, see "RISK FACTORS".** For the reference to the definitions of capitalised words and phrases appearing herein see "Index of Defined Terms".

Any person intending to invest in any investment described in this document should consult his professional advisor, including his stock broker, legal advisor and accountant, and ensure that he fully understands all the risks associated with making such an investment and has sufficient financial resources to sustain any loss that may arise from it.

THE NOTES HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR ANY STATE SECURITIES LAWS, AND UNLESS SO REGISTERED MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. ACCORDINGLY, THE NOTES ARE BEING OFFERED AND SOLD ONLY TO PERSONS (OTHER THAN U.S. PERSONS) OUTSIDE THE UNITED STATES PURSUANT TO REGULATION S UNDER THE SECURITIES ACT. FOR A DESCRIPTION OF CERTAIN RESTRICTIONS ON REALES OR TRANSFERS, SEE "SUBSCRIPTION AND SALE" BELOW.

**The payment of principal of and, due to potential principal reductions, interest on the Notes is conditional upon the performance of the Reference Claims as described herein. There is no guarantee that the Noteholders will receive the full principal amount of the Notes and interest thereon and ultimately the obligations of the Issuer to pay principal under the Notes could even be reduced to EUR 1 per Note as a result of losses incurred in respect of the Reference Claims.**

The payment obligations of the Issuer under the Notes will be secured by the Collateral.

On the Issue Date, the Issuer will pledge (*verpfänden*) to the Trustee the Note Collateral as well as all its present and future claims and rights under the Transaction Documents (other than the Corporate Services Agreement, the Irish Security Agreement and the First Pledge Agreement) to secure the Trustee Claim under the Trust Agreement. The Trustee Claim entitles the Trustee to demand that all present and future obligations of the Issuer under the Notes be fulfilled. See "THE TRUST AGREEMENT" and "THE COLLATERAL".

On the Issue Date, the Issuer will also pledge the Note Collateral to the Bank as security for the Issuer's obligations under the Issuer Guarantee as described herein. Such pledge will rank senior to the pledge in respect of the Note Collateral granted to the Trustee pursuant to the Trust Agreement. See "THE TRUST AGREEMENT" and "THE COLLATERAL".

**Notwithstanding the Collateral, the amount of principal of and, due to potential principal reductions, interest on the Notes may be reduced as a result of Realised Losses incurred with respect to the Reference Claims. In the event of such reduction, only the obligations of the Issuer to pay such reduced principal and interest will have the benefit of the Collateral.**

Pursuant to the Trust Agreement the Trustee will, *inter alia*, verify the determinations and allocations of Realised Losses incurred in the Reference Pool in accordance with procedures set out in the Trust Agreement. See "THE NOTES – Loss Allocation" and "THE TRUST AGREEMENT".

The Notes will be governed by the laws of the Federal Republic of Germany ("**Germany**").

Each Class of Notes will be initially represented by a temporary global note in bearer form without interest coupons attached. The Temporary Global Note for each Class of Notes will be exchangeable, as described herein (see "THE NOTES - Notes") for a permanent global note in bearer form representing such Class of Notes without interest coupons attached. The Global Notes will be deposited with Citibank, N.A., London Branch, 21<sup>st</sup> Floor, Citigroup Centre, Canada Square, Canary Wharf, London E14 5LB, United Kingdom (in such capacity, the "**Common Depositary**") as common depositary for Euroclear Bank S.A./N.V. as operator of the Euroclear System ("**Euroclear**"), and Clearstream Banking, société anonyme ("**Clearstream, Luxembourg**"). The Temporary Global Notes will be deposited with the Common Depositary on or before the Issue Date.

The Class B Notes, Class C Notes, Class D Notes, the Class E Notes, the Class F Notes and Class G Notes will be issued in denominations of EUR 100,000, and the Class A1+ Notes and the Class A2+ Notes will be issued in denominations of EUR 50,000. The Global Notes will not be exchangeable for

definitive notes.

THE NOTES REPRESENT OBLIGATIONS OF THE ISSUER ONLY AND DO NOT REPRESENT AN INTEREST IN OR OBLIGATIONS OF THE LEAD MANAGER, THE TRUSTEE, ANY OF THE AGENTS, ANY OF THE SERVICERS, THE BANK OR ANY OF THEIR RESPECTIVE SUBSIDIARIES OR AFFILIATES OR ANY AFFILIATE OF THE ISSUER OR ANY OTHER THIRD PERSON OR ENTITY. NEITHER THE NOTES NOR THE REFERENCE CLAIMS WILL BE INSURED OR GUARANTEED BY ANY GOVERNMENTAL AGENCY OR INSTRUMENTALITY OR BY THE LEAD MANAGER, THE TRUSTEE, ANY OF THE AGENTS, ANY OF THE SERVICERS, THE BANK OR ANY OF THEIR RESPECTIVE SUBSIDIARIES OR AFFILIATES OR BY ANY OTHER PERSON OR ENTITY EXCEPT AS DESCRIBED HEREIN. NEITHER THE LEAD MANAGER, NOR THE TRUSTEE, NOR ANY OF THE AGENTS, NOR ANY OF THE SERVICERS, NOR THE BANK, NOR ANY OF THEIR RESPECTIVE SUBSIDIARIES OR AFFILIATES, NOR ANY AFFILIATE OF THE ISSUER, NOR ANY OTHER THIRD PERSON OR ENTITY, ASSUMES ANY LIABILITY TO THE NOTEHOLDERS IF THE ISSUER FAILS TO MAKE A PAYMENT DUE UNDER THE NOTES.

<u>Class</u>	<u>Initial Class Principal Amount</u>	<u>Interest Rate</u>	<u>ISIN</u>
Class A1+	EUR 500,000	EURIBOR* + 1.50%	XS0375835880
Class A2+	EUR 500,000	EURIBOR* + 2.00%	XS0375836185
Class B	EUR 38,400,000	EURIBOR* + 2.50%	XS0375838553
Class C	EUR 21,000,000	EURIBOR* + 4.25%	XS0375839106
Class D	EUR 18,000,000	EURIBOR* + 6.50%	XS0375839791
Class E	EUR 19,000,000	EURIBOR* + 9.75%	XS0375841185
Class F	EUR 8,600,000	EURIBOR* + 13.00%	XS0375841938
Class G	EUR 13,000,000	EURIBOR* + 16.00%	XS0375842076

(\*) As determined on each EURIBOR Determination Date. See "THE NOTES – Payments of Interest – Interest Rates".

Payments of interest and principal on the Notes to the Noteholders will be made on each Payment Date.

The Notes will be redeemed on the Scheduled Maturity Date unless earlier redeemed as described herein and *provided that* if as of the end of the Collection Period immediately preceding the Scheduled Maturity Date any Overdue Reference Claims are outstanding as to principal, certain Notes may remain outstanding after the Scheduled Maturity Date and payments of principal will be made on such Notes on each Payment Date after the Scheduled Maturity Date as described herein. See "THE NOTES – Redemption", "– Early Redemption for Default" and "– Early Redemption by the Issuer".

Payments with respect to the Notes are to be made by the Issuer net of any withholding taxes required to be deducted by law and any withholding taxes imposed with respect to the amounts received under the Note Collateral and/or the Issuer Guarantee.

The Noteholders will not be entitled to gross-up payments in the event that payments on the Notes and/or payments under the Note Collateral become subject to withholding taxes and/or payments under the Issuer Guarantee become subject to any taxes and the Noteholders will not have the right to require an early redemption of the Notes in such event. See "THE NOTES – Taxes".

The Issuer will redeem all of the Notes if the Bank in its sole discretion elects to have an Issuer Guarantee Termination occur as a result of withholding or deduction for taxes with respect to payments on the Notes, the Note Collateral, the Issuer Guarantee, the A1 Senior Guarantee, if any, the

A2 Senior Guarantee, if any, or any other agreement relating to this Transaction. See "THE NOTES – Early Redemption by the Issuer".

In connection with the issue of the Notes, the Bank will enter into

- (i) a loss guarantee agreement (the "**Issuer Guarantee**") between the Issuer as protection seller and the Bank as protection buyer effective as of October 7, 2008. Pursuant to the Issuer Guarantee, the Issuer will pay to the Bank amounts equal to all Realised Losses incurred in the Reference Pool and allocated to the Notes pursuant to the Loss Allocation.
- (ii) a credit default swap (the "**Class E Swap**") between a counterparty as protection seller (the "**Class E Swap Counterparty**") and the Bank as protection buyer effective as of October 7, 2008. Pursuant to the Class E Swap, the Class E Swap Counterparty will pay to the Bank an amount equal to a specified fraction of the amounts by which the Class Principal Amount of the Class E Notes is reduced as a result of any Loss Allocation.

After the Issue Date, the Bank may enter into

- (i) a loss guarantee agreement (the "**A1 Senior Guarantee**") between a counterparty as protection seller (the "**A1 Senior Guarantee Counterparty**") and the Bank as protection buyer. Pursuant to the A1 Senior Guarantee, the A1 Senior Guarantee Counterparty will pay to the Bank amounts equal to a specified multiple of the amounts by which the Class Principal Amount of the Class A1+ Notes is reduced as a result of any Loss Allocation;
- (ii) a loss guarantee agreement (the "**A2 Senior Guarantee**") between a counterparty as protection seller (the "**A2 Senior Guarantee Counterparty**") and the Bank as protection buyer. Pursuant to the A2 Senior Guarantee, the A2 Senior Guarantee Counterparty will pay to the Bank amounts equal to a specified multiple of the amounts by which the Class Principal Amount of the Class A2+ Notes is reduced as a result of any Loss Allocation; and
- (iii) any type of credit protection ("the **Junior Credit Protection**") between a counterparty as protection seller (the "**Junior Investor**") and the Bank as protection buyer.

The allocation of Realised Losses to the Notes as described herein will not be affected by the A1 Senior Guarantee, if any, the A2 Senior Guarantee, if any, the Class E Swap or the Junior Credit Protection, if any, and the respective rights and obligations of Commerzbank, the A1 Senior Guarantee Counterparty, the A2 Senior Guarantee Counterparty, the Class E Swap Counterparty and the Junior Investor thereunder, *provided that* in the case of a conflict of interest between the interests of the A1 Senior Guarantee Counterparty, if any, the A2 Senior Guarantee Counterparty, if any, the Class E Swap Counterparty, the Noteholders and the Junior Investor, if any, priority will be given to the interests of the A1 Senior Guarantee Counterparty, if any, and the holder of the Class A1+ Notes, then to the interests of the A2 Senior Guarantee Counterparty, if any, and the holder of the Class A2+ Notes, then to the interests of the holders of the Class B Notes, then to the interests of the holders of the Class C Notes, then to the interests of the holders of the Class D Notes, then to the interests of the Class E Swap Counterparty and the holders of the Class E Notes, then to the interests of the holders of the Class F Notes, and lastly to the interests of the Junior Investor, if any, *provided that* the interests of the A1 Senior Guarantee Counterparty and the holders of the Class A1 Notes will rank *pari passu*, the interests of the A2 Senior Guarantee Counterparty and the holders of the Class A2 Notes will rank *pari passu*, and the interests of the Class E Swap Counterparty and the holders of the Class E Notes will rank *pari passu*. See "THE TRUST AGREEMENT".

The Class A1+, Class A2+, Class B, Class C, Class D, Class E and Class F Notes (together, the "**Rated Notes**") are expected to be rated by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. ("**S&P**") and Moody's Investors Service Limited ("**Moody's**", and together with S&P, the "**Rating Agencies**"). The Class G Notes will not be rated. It is a condition of

the issue of the Rated Notes that each Class of Rated Notes receives the rating indicated below:

<u>Class</u>	<u>S&amp;P</u>	<u>Moody's</u>
Class A1+	AAA	Aaa
Class A2+	AAA	Aaa
Class B	AA	Aa2
Class C	A	A2
Class D	BBB	Baa2
Class E	BB	Ba2
Class F	B	B2

The rating of "AAA" is the highest rating that S&P assigns to long term debt and the rating of "Aaa" is the highest rating that Moody's assigns to long term debt.

The ratings assigned by Moody's to each Class of Rated Notes address the expected amount of Realised Losses in proportion to the initial Class Principal Amount of such Class of Rated Notes posed to investors by the Legal Maturity Date. Moody's ratings address only credit risks associated with the transaction. Other risks have not been addressed by Moody's, but may have a significant effect on yield to investors.

The rating of each Class of Rated Notes by S&P addresses the likelihood that the holders of such Class of Rated Notes will receive all payments to which they are entitled, as described herein. The rating of each Class of Rated Notes by S&P also addresses the risk that a Realised Loss will be allocated to such Class of Rated Notes pursuant to the Terms and Conditions as described herein. The rating of all Rating Agencies takes into consideration the characteristics of the Reference Claims and the current structural, legal, tax and Issuer-related aspects associated with the Rated Notes. However, the ratings assigned to the Rated Notes do not represent any assessment of the likelihood of principal prepayments. The ratings do not address the possibility that the Noteholders might suffer a lower than expected yield due to prepayments.

**The ratings assigned to the Rated Notes should be evaluated independently from similar ratings on other types of securities. A security rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal by the Rating Agencies at any time.**

In this Prospectus references to "euro" or "EUR" or "€" are to the single unified currency of the members of the European Union ("EU"), including Germany and Ireland, which adopted the euro in accordance with the Treaty on European Union, as amended from time to time.

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

This Prospectus serves to describe, *inter alia*, the Notes, the Issuer, Commerzbank, the Collateral and the Reference Pool.

The Issuer is responsible for the information contained in this Prospectus except that

- (a) the Trustee only is responsible for the information under "THE TRUSTEE";
- (b) the Bank only is responsible for the information under "OUTLINE OF THE TRANSACTION – The Reference Pool", "DESCRIPTION OF THE REFERENCE POOL", "REFERENCE POOL SERVICING" and "THE BANK"; and

- (c) Structured Finance Management (Ireland) Limited only is responsible for the information under "CORPORATE SERVICES – Description of the Corporate Services Provider".

Having taken all reasonable care to ensure that such is the case, the information contained in that part of the Prospectus for which the Issuer is responsible is, to the best of its knowledge, in accordance with the facts and contains no omission likely to affect its import.

Having taken all reasonable care to ensure that such is the case, the information contained in that part of the Prospectus for which the Trustee is responsible is, to the best of its knowledge, in accordance with the facts and contains no omission likely to affect its import.

Having taken all reasonable care to ensure that such is the case, the information contained in that part of the Prospectus for which the Bank is responsible is, to the best of its knowledge, in accordance with the facts and contains no omission likely to affect its import.

Having taken all reasonable care to ensure that such is the case, the information contained in that part of the Prospectus for which Structured Finance Management (Ireland) Limited is responsible is, to the best of its knowledge, in accordance with the facts and contains no omission likely to affect its import.

Subject to the following paragraphs, each of the Issuer, the Trustee, the Bank and Structured Finance Management (Ireland) Limited accepts responsibility accordingly.

*No person has been authorised to give any information or to make any representation other than as contained in this Prospectus and, in connection with the issue and sale of the Notes, if given or made, such information or representation must not be relied upon as having been authorised by the Issuer, the Bank, the Trustee or the Lead Manager.*

*Neither the delivery of this Prospectus nor any offering, sale or delivery of any Notes shall, under any circumstances, create any implication (i) that the information in this Prospectus is correct as of any time subsequent to the date hereof or, as the case may be, subsequent to the date on which this Prospectus has been most recently amended or supplemented, or (ii) that there has been no adverse change in the financial situation of the Issuer or of the Bank which is material in the context of the issue and offering of the Notes or with respect to the Reference Pool since the date of this Prospectus or, as the case may be, the date on which this Prospectus has been most recently amended or supplemented or (iii) that any other information supplied in connection with the issue of the Notes is correct at any time subsequent to the date on which it is supplied or, if different, the date indicated in the document containing the same.*

*No action has been taken by the Issuer or the Lead Manager other than as set out in this Prospectus that would permit a public offering of the Notes, or possession or distribution of this Prospectus or any other offering material in any country or jurisdiction where action for that purpose is required. Accordingly, no Notes may be offered or sold, directly or indirectly, and neither this Prospectus (nor any part hereof) nor any offering circular, prospectus, form of application, advertisement or other offering materials may be issued, distributed or published in any country or jurisdiction except in compliance with applicable laws, orders, rules and regulations, and the Lead Manager has represented that all offers and sales by it have been made on such terms.*

*This Prospectus does not constitute an offer to sell or the solicitation of an offer to buy any securities other than the securities to which it relates or an offer to sell or the solicitation of an offer to buy any of the securities offered hereby in any circumstances in which such offer or solicitation is unlawful. The distribution of this Prospectus (or of any part hereof) and the offering and sale of the Notes in certain jurisdictions may be restricted by law. Persons into whose possession this Prospectus (or any part hereof) comes are required by the Issuer and the Lead Manager to inform themselves about and to observe any such restrictions. This Prospectus does not constitute, and may not be used for, or in connection with, an offer or solicitation by anyone in any jurisdiction in which such offer or*

*solicitation is not authorised or to any person to whom it is unlawful to make such offer or solicitation. In particular, the Notes have not been and will not be registered under the Securities Act and may not be offered or sold in the United States except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.*

***For a further description of certain restrictions on offerings and sales of the Notes and distribution of this Prospectus (or of any part hereof) see "SUBSCRIPTION AND SALE".***

**The investments described in this document are investment products designed for financially sophisticated investors with specialist knowledge of, and experience of investing in, such investments, who are capable of fully evaluating the risks involved in making such investments and who have an asset base sufficiently substantial as to enable them to sustain any loss that they might suffer as a result of making such investments.**

**Any person intending to invest in any investment, described in this document should consult his professional advisor, including his stock broker, legal advisor and accountant, and ensure that he fully understands all the risks associated with making such an investment and has sufficient financial resources to sustain any loss that may arise from it.**

**In connection with the issue and distribution of the Notes, the Lead Manager, or any person acting for it, may over-allot Notes (*provided that* the aggregate principal amount of Notes allotted does not exceed 105 percent of the aggregate principal amount of Notes) or effect transactions with a view to supporting the market price of the Notes at a level higher than that which might otherwise prevail. However, there is no assurance that the Lead Manager or any person acting for it will undertake such action. Any stabilisation action may begin on or after the date on which adequate public disclosure of the terms of the offer of the Notes is made and, if begun, may be ended at any time, but it must end no later than the earlier of 30 calendar days after the issue date of the Notes and 60 calendar days after the date of the allotment of the Notes.**

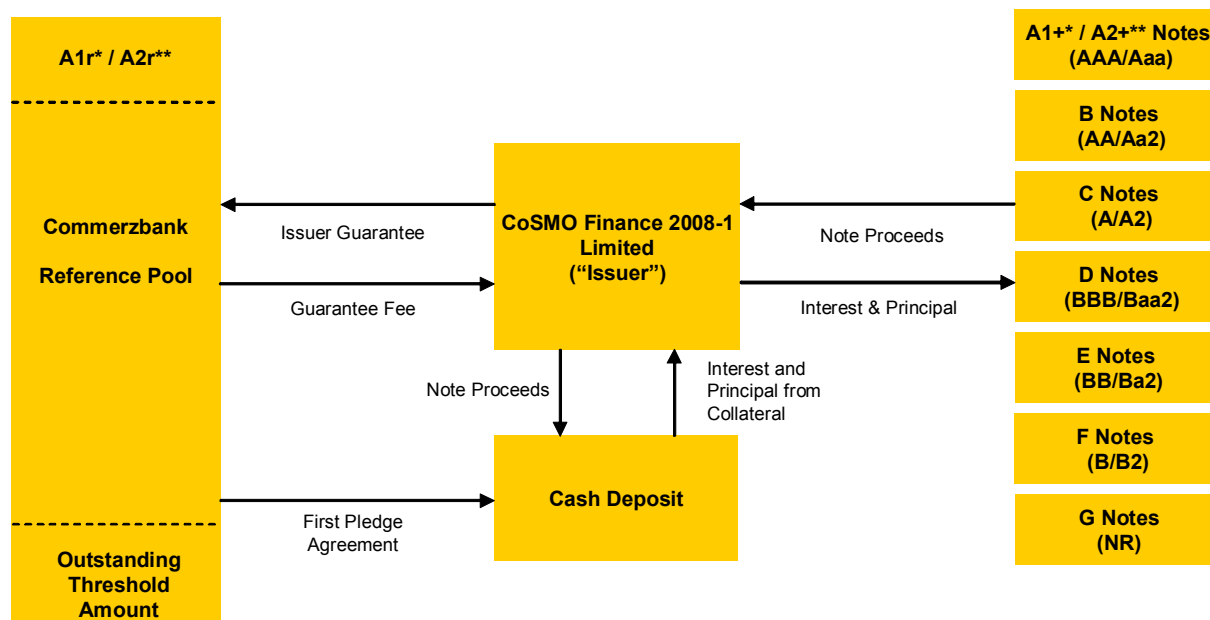
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**TRANSACTION OVERVIEW**  
(as of the end of business on the Issue Date)

The following transaction overview is qualified in its entirety by reference to the detailed information appearing elsewhere in this Prospectus.



\* The super senior tranche consists of the Class A1+ Notes which rank *pari passu* with the remainder; the latter is referred to as Class A1r in this chart. No transaction exists with respect to Class A1r on the Issue Date. Loss allocation to and redemption of the Class A1+ Notes happens in each case *pro rata* according to their share of the super senior tranche.

\*\* The lower senior tranche consists of the Class A2+ Notes which rank *pari passu* with the remainder; the latter is referred to as Class A2r in this chart. No transaction exists with respect to Class A2r on the Issue Date. Loss allocation to and redemption of the Class A2+ Notes happens in each case *pro rata* according to their share of the lower senior tranche.

## OUTLINE OF THE TRANSACTION

The following general description of the transaction is qualified in its entirety by reference to the detailed information appearing elsewhere in this Prospectus.

### **The Issuer**

CoSMO Finance 2008-1 Limited, a private limited liability company incorporated under the laws of Ireland having its registered office at 25-26 Windsor Place, Lower Pembroke Street, Dublin 2 Ireland, telephone number: +353 1 647 1550. The Issuer has been established for the purpose of issuing the Notes, entering into the Issuer Guarantee and into all other Transaction Documents to which it is a party. See "THE ISSUER".

### **The Notes**

The Notes are credit linked to the performance of a replenishable reference pool of certain claims for the payment of principal and interest and certain other payment claims, in each case, including partial claims, held by or for the benefit of Commerzbank Aktiengesellschaft, including its branches or any subsidiary or affiliate of Commerzbank, arising from (a) certain loans, including fixed or floating rate, amortising, bullet or annuity loans, syndicated loans, participations and sub-participations, (b) certain revolving credit facilities, including syndicated revolving credit facilities and (c) certain guarantees, including syndicated guarantees, in each case, to corporate entities (including financial institutions) and certain other entities, and originated, including by way of acquisition from a third party, by the Bank or a subsidiary of the Bank pursuant to its credit and collection policies and serviced by the Servicers or, in the case of certain syndicated Reference Loans, syndicated Reference Facilities or syndicated Reference Guarantees, by Agent Banks monitored by the relevant Servicers, which are included in the Reference Pool as of the Cut-off Date or from time to time thereafter as described herein. See "THE NOTES".

The rights and claims of the Noteholder under the Notes are set out, *inter alia*, in Section 7, Section 10 and Section 11 of the Terms and Conditions and in Clauses 2.2 and Clause 26 of the Trust Agreement.

### **Status of the Notes**

The Notes constitute direct and unsubordinated obligations of the Issuer, ranking *pari passu* among themselves and at least *pari passu* with all other current and future unsubordinated obligations of the Issuer, subject to Loss Allocation, Unjustified Loss Allocation and the Collateral and the redemption of the Notes in accordance with the Terms and Conditions, if applicable. The Notes constitute limited recourse obligations of the Issuer.

### **Corporate Services Provider**

Structured Finance Management (Ireland) Limited, 25-26 Windsor Place, Lower Pembroke Street, Dublin 2, Ireland.

### **Cash Administrator**

Citibank, N.A., London Branch, 21<sup>st</sup> Floor, Citigroup Centre,

	Canada Square, Canary Wharf, London E14 5LB, United Kingdom.
<b>The Transaction Account Bank</b>	Citigroup Global Markets Deutschland AG & Co. KGaA, Frankfurter Welle, Reuterweg 16, 60323 Frankfurt am Main, Germany.
<b>The Bank</b>	Commerzbank Aktiengesellschaft, Neues Hochhaus, Kaiserstrasse 16, 60261 Frankfurt am Main, Germany.
<b>The Servicers</b>	The Bank; its subsidiaries and its affiliates on its behalf, <i>provided that</i> certain syndicated Reference Loans, syndicated Reference Facilities and syndicated Reference Guarantees may be serviced by the Agent Banks. See "REFERENCE POOL SERVICING".
<b>The Arranger and Lead Manager</b>	Commerzbank Aktiengesellschaft, 60 Gracechurch Street, London EC3V 0HR, United Kingdom (the " <b>Arranger</b> " and the " <b>Lead Manager</b> ").
<b>The Trustee</b>	Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft, Schwannstrasse 6, 40476 Düsseldorf, Germany.
<b>The Principal Paying Agent</b>	Citibank, N.A., London Branch, 21 <sup>st</sup> Floor, Citigroup Centre, Canada Square, Canary Wharf, London E14 5LB, United Kingdom.
<b>The Irish Listing Agent</b>	A&L Listing Limited, 25-28 North Wall Quay, IFSC, Dublin 1, Ireland.
<b>Depository Agent</b>	There shall be no depository agent involved in connection with the issue of the Notes.
<b>Cut-off Date</b>	April 30, 2008
<b>Issue Date</b>	October 7, 2008
<b>Payment Dates</b>	Without prejudice to Section 11.2 (Early Redemption for Default – Method and Amount) of the Terms and Conditions, payments of principal and interest on the Notes will be made to the Noteholders quarterly in arrear, on the 29 <sup>th</sup> calendar day of January, April, July and October, or, if any such day is not a Business Day, on the next succeeding day which is a Business Day unless such day would thereby fall into the next calendar month, in which case the payment will be made on the immediately preceding Business Day. The first Payment Date will be in January 2009.
<b>Interest Accrual Period</b>	In respect of the first Payment Date, the period commencing on (and including) the Issue Date and ending on (but excluding) the first Payment Date and in respect of any subsequent Payment Date, the period commencing on (and including) the immediately preceding Payment Date and ending on (but excluding) such Payment Date.

### **Payment of Interest**

On each Payment Date, the interest accrued during the applicable Interest Accrual Period at the per annum rate indicated herein for each Class of Notes will be payable on the Class Principal Amounts outstanding as of the immediately preceding Payment Date (after Loss Allocation, Unjustified Loss Allocation and payment of principal, if any, on such date) or the Issue Date (in the case of the first Payment Date) as described herein.

The amount of interest payable on the Notes may be reduced, due to potential principal reductions, as a result of Realised Losses incurred with respect to the Reference Claims.

See "THE NOTES – Payments of Interest" and "– Loss Allocation".

### **Payment of Principal**

On each Payment Date on or prior to the end of the Replenishment Period, the Notes may be redeemed up to an amount or in an amount equal to the Excess Amount as follows:

- (i) the Class A1+ Notes shall be redeemed up to an amount or in an amount equal to the product of the Excess Amount and the A1+ Reduction Factor;
- (ii) after the Class A1+ Notes have been redeemed in full, the Class A2+ Notes shall be redeemed up to an amount or in an amount equal to the product of the Excess Amount and the A2+ Reduction Factor;
- (iii) after the Class A2+ Notes have been redeemed in full, the Class B, the Class C, the Class D, the Class E, the Class F and then the Class G Notes, in this order sequentially, shall be redeemed up to an amount or in an amount in aggregate equal to the Excess Amount,

*provided that* the redemption amount allocated to each Class of Notes will be, in each case, calculated (a) after the reduction of the Class Principal Amount(s) and/or the Outstanding Threshold Amount by allocation of Realised Losses, if any, and (b) the increase of the Class Principal Amount(s) and/or the Outstanding Threshold Amount as a result of the Unjustified Loss Allocation procedure, if any, in each case, on the relevant Payment Date.

See "THE NOTES – Redemption – Amortisation of the Notes".

### **Redemption - Scheduled Maturity Date**

The Payment Date falling in July 2022. The Notes will be redeemed on the Scheduled Maturity Date unless earlier redeemed as described herein and *provided that* if as of the end of the Collection Period immediately preceding the Scheduled Maturity Date any Overdue Reference Claims are outstanding, the Issuer shall procure that Appraised Losses in respect of such Overdue Reference Claims are determined within 120 calendar days of the Scheduled Maturity Date and each such Appraised Loss shall constitute a Realised Loss to be allocated pursuant to the Loss Allocation.

See "THE NOTES – Redemption – Scheduled Maturity and Legal Maturity", "– Early Redemption for Default" and "– Early Redemption by the Issuer".

**Redemption - Legal Maturity Date**

November 29, 2022.

See "THE NOTES – Redemption – Scheduled Maturity and Legal Maturity".

**Early Redemption**

(i) In the case of an Issuer Guarantee Termination pursuant to clause (A) of the definition of "Issuer Guarantee Termination", and subject to Section 12.2 of the Terms and Conditions, on the Payment Date on which an Issuer Guarantee Termination occurs, or

(ii) in the case of an Issuer Guarantee Termination pursuant to clause (B) of the definition of "Issuer Guarantee Termination", and subject to Section 12.3 of the Terms and Conditions, within 10 Business Days following the date as of which an Issuer Guarantee Termination occurs,

the Issuer shall redeem the Notes, in each case, at the then current Note Principal Amount as of such Payment Date or such date in accordance with Section 12 of the Terms and Conditions.

Issuer Guarantee Termination occurs on the Payment Date as of which the Issuer Guarantee is terminated by the Bank at its option (i) following the occurrence of a Regulatory Event, or (ii) following the reduction of the Aggregate Principal Balance to 10% or less of the Replenishment Cap, or (iii) falling in or after July 2012; or (B) on the date the Issuer Guarantee is terminated because of the occurrence of an Issuer Event of Default or a Bank Event of Default.

See "THE NOTES – Early Redemption by the Issuer".

Each Noteholder may declare due the Notes held by it by delivery of a written notice to the Issuer with a copy to the Trustee if a Default Event in respect of such Notes has occurred, *provided that* the right to declare the Notes due shall cease to exist if such Default Event has been cured before the right is exercised. In the event that any Noteholder exercises such right the Issuer will redeem the Notes as described herein.

See "THE NOTES – Early Redemption for Default".

**Collection Period**

With respect to the first Payment Date, the period from the Cut-off Date until the last calendar day of the second calendar month preceding the month in which the first Payment Date occurs (both days inclusive) and with respect to any subsequent Payment Date, the period from the calendar day immediately following the last day of the previous Collection Period until the last calendar day of the second calendar month preceding the month in which the relevant Payment Date occurs (both

days inclusive).

## Reference Pool

On the Cut-off Date, the Reference Pool consisted of certain claims for the payment of principal and interest and certain other payment claims, in each case, including partial claims, held by or for the benefit of Commerzbank or any subsidiary or affiliate of Commerzbank, arising from (a) certain loans, including fixed or floating rate, amortising, bullet or annuity loans, syndicated loans, participations and sub-participations, (b) certain revolving credit facilities, including syndicated revolving credit facilities and (c) certain guarantees, including syndicated guarantees, in each case, to corporate entities (including financial institutions) and certain other entities, and originated, including by way of acquisition from a third party, by the Bank or a subsidiary of the Bank pursuant to its credit and collection policies and serviced by the Servicers or by Agent Banks. The aggregate Outstanding Nominal Amount of the Reference Claims as of the Cut-off Date was approximately EUR 1,500,000,000.

However, Reference Claims may be removed from the Reference Pool, or a substitution effective as of the Cut-off Date may be made for certain Reference Claims, *prior* to the Issue Date. Any Reference Claim may be so excluded (i) as a result of principal prepayment thereof in full or (ii) if, as a result of late payments or otherwise, the Bank deems such exclusion necessary or desirable. This may result in changes to certain of the Reference Pool characteristics set out in this Prospectus.

In the event that any of the characteristics of the Reference Pool on the Issue Date varies materially from those described herein, revised information regarding the Reference Pool will be made available to purchasers of the Notes and the Rating Agencies on or before such date.

A Reference Claim may be secured by certain collateral held from time to time by or for the benefit of the Bank and securing such Reference Claim and certain other claims (including other Reference Claims) of the Bank. See "DESCRIPTION OF THE REFERENCE POOL – Reference Pool Provisions – Reference Collateral".

As of the Issue Date or, in respect of Reference Claims subsequently added to the Reference Pool, the relevant Replenishment Date, certain Eligibility Criteria with respect to each of the Reference Claims must be met. Reference Claims which did not meet such Eligibility Criteria as of the Issue Date or any relevant Replenishment Date may be removed from the Reference Pool after the Issue Date or will not qualify for Loss Allocation unless certain exceptions apply. There have been no insurance policies provided for the direct benefit of the Issuer in relation to the Reference Claims.

For a detailed description of the Reference Pool, see "DESCRIPTION OF THE REFERENCE POOL – Reference

Pool Provisions".

**Replenishment of the Reference Pool**

New Reference Claims may be added to the Reference Pool on the last calendar day of any month during the period from (and including) the Issue Date until (and including) the Payment Date falling in July 2012 (such period, the "**Replenishment Period**"), *provided that* the Replenishment Conditions are met.

On any Replenishment Date, the Bank may substitute any Reference Claim or any portion thereof, the Debtor of which has a Commerzbank Rating between 1.0 and 3.4 (inclusive) with a new Reference Claim or new Reference Claims, or any portion thereof.

See "DESCRIPTION OF THE REFERENCE POOL – Reference Pool Provisions – Replenishment".

**Servicing of the Reference Pool**

The Servicers and, in the case of certain syndicated Reference Loans, syndicated Reference Facilities and syndicated Reference Guarantees, the Agent Banks, will administer, collect and enforce the Reference Claims, including by way of foreclosure on the related Reference Collateral.

The Servicers will service the Reference Claims and act towards the Agent Banks servicing the Reference Claims, in accordance with the Servicing Standards. See "REFERENCE POOL SERVICING".

**Servicing Standards**

The standard credit and collection policies of the Bank (in the case of Reference Claims arising under syndicated Reference Loans, syndicated Reference Facilities or syndicated Reference Guarantees, subject to the servicing conditions under such Reference Loan documentation, Reference Facility documentation or Reference Guarantee documentation, as applicable) and certain specific servicing principles (the "**Servicing Principles**") are set out in this Prospectus. The Servicing Principles form part of the Terms and Conditions of the Notes. See "REFERENCE POOL SERVICING".

**Loss Allocation**

On each Payment Date, any Realised Losses in respect of Reference Claims qualifying for the Loss Allocation will be allocated first to reduce the Outstanding Threshold Amount and then, after the Outstanding Threshold Amount has been reduced to zero, to reduce the Note Principal Amounts to EUR 1 per Note of the Class G Notes, the Class F Notes, the Class E Notes, the Class D Notes, the Class C Notes and the Class B Notes, in this order sequentially. Realised Losses will be allocated to reduce the Class Principal Amount of the Class A2+ Notes only after the Class Principal Amount of the Class B Notes has been reduced to EUR 1 per Note, *provided that* only the product of the Realised Losses and the A2+ Reduction Factor shall be allocated to reduce the Class Principal Amount of the Class A2+ Notes. Realised Losses will be allocated to reduce the Class Principal Amount of the Class A1+ Notes only after the Class Principal Amount of the Class A2+ Notes has been reduced to EUR 1 per Note,

*provided that* only the product of the Realised Losses and the A1+ Reduction Factor shall be allocated to reduce the Class Principal Amount of the Class A1+ Notes.

**"Realised Loss"** means, with respect to a Liquidated Reference Claim, the Outstanding Nominal Amount of such Liquidated Reference Claim, the Accrued Interest on such Liquidated Reference Claim and the related Enforcement Costs, each as of the end of the Collection Period during which it became a Liquidated Reference Claim, in each case, not otherwise recovered from collections (including any net enforcement proceeds) as allocated pursuant to Provision 4 (Allocation of Payments and Enforcement Proceeds) of the Reference Pool Provisions. See "THE NOTES – Loss Allocation".

Reference Claims with respect to which any of the Eligibility Criteria, Replenishment Conditions, Servicing Standards or, if relevant, the requirements for transfer of Reference Claims as set out in the Reference Pool Provisions are not complied with will not qualify for Loss Allocation, unless one of the exceptions described herein applies, and may be removed from the Reference Pool.

See "THE NOTES – Loss Allocation" and "DESCRIPTION OF THE REFERENCE POOL – Reference Pool Provisions – Non-compliance".

#### **Note Collateral**

As security for the obligations of the Issuer under the Notes, the Issuer will pledge the Note Collateral to the Trustee. The Note Collateral will consist of all rights and claims of the Issuer under the Cash Deposit Account. The net proceeds from the issue of the Notes will be deposited in the Cash Deposit Account on or about the Issue Date. The Cash Deposit Account will be an account held in Germany and will be governed by the laws of Germany.

The Trustee Claim will be secured by a pledge (*Pfandrecht*) for the benefit of the Trustee over the Note Collateral. The pledge over the Note Collateral will be subject and rank junior to a first ranking pledge (*Pfandrecht*) for the benefit of the Bank as security for the obligations of the Issuer under the Issuer Guarantee towards the Bank. In addition, the Issuer will on the Issue Date pledge (*verpfänden*) to the Trustee all its present and future claims and rights under the Transaction Documents (other than the Corporate Services Agreement, the Irish Security Agreement and the First Pledge Agreement) to secure the Trustee Claim under the Trust Agreement.

See "THE TRUST AGREEMENT" and "THE COLLATERAL".

#### **Form and Denominations**

Each Class of Notes will be initially represented by a Temporary Global Note in bearer form which will be exchangeable for a Permanent Global Note in bearer form representing the relevant Class of Notes as described herein. The Notes may be transferred in book-entry form only. The



Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and the Class G Notes will be issued in denominations of EUR 100,000 and the Class A1+ Notes and the Class A2+ Notes will be issued in denominations of EUR 50,000. The Global Notes representing the Notes will not be exchangeable for definitive securities. See "THE NOTES – Notes".

#### **Trust Agreement**

Pursuant to the Trust Agreement between the Issuer, the Bank and the Trustee for the benefit of the Noteholders, the Junior Investor, if any, the Class E Swap Counterparty, the A2 Senior Guarantee Counterparty, if any, and the A1 Senior Guarantee Counterparty, if any, the Trustee will confirm compliance, verify the Loss Allocation and will supervise and verify determinations and calculations and other actions of the Bank and the Issuer in connection with the Notes, the Issuer Guarantee, the Junior Credit Protection, if any, the Class E Swap, the A2 Senior Guarantee, if any, and the A1 Senior Guarantee, if any, as described herein.

Pursuant to the Trust Agreement the Issuer will also be required to make certain security arrangements with respect to the Collateral as described herein.

See "THE TRUST AGREEMENT".

#### **Issuer's Source of Income**

The Issuer will receive the funds necessary for the payments under the Notes from the Note Collateral and under the Issuer Guarantee.

Under the Issuer Guarantee, the Bank will pay to the Issuer in respect of each Payment Date an amount (the "**Guarantee Fee**") calculated as the sum of (i) the costs and expenses of the Issuer and (ii) the excess, if any, of (A) the aggregate Interest Amount payable by the Issuer on the Notes on such Payment Date, over (B) the aggregate amount of the interest amounts due (for the avoidance of doubt, prior to any withholding or deduction on account of taxes) under the Note Collateral on the relevant Payment Date.

In addition, pursuant to the Issuer Guarantee, the Bank shall pay to the Issuer on each Payment Date falling in October in advance an annual transaction fee in the amount of EUR 1,000.

See "THE ISSUER GUARANTEE".

#### **Use of Proceeds**

The net proceeds from the issue of the Notes are approximately EUR 119,000,000. The net proceeds are equal to the gross proceeds and will be deposited onto the Cash Deposit Account on the Issue Date.

#### **Selling Restrictions**

Subject to certain exceptions, the Notes are not being offered, sold or delivered within the United States or to U.S. persons. For a description of these and other restrictions on sale and transfer see "SUBSCRIPTION AND SALE".

<b>Listing</b>	The Prospectus has been approved by the Irish Financial Services Regulatory Authority, as competent authority under Directive 2003/71/EC. The Irish Financial Services Regulatory Authority only approves this Prospectus as meeting the requirements imposed under Irish and EU law pursuant to Directive 2003/71/EC. Application has been made to list the Class A1+ Notes, Class A2+ Notes, Class B Notes, Class C Notes, Class D Notes, Class E Notes, Class F Notes and Class G Notes to be admitted to the Official List and trading on the regulated market of the Irish Stock Exchange. The direct cost of the admission of the Notes to trading on the Irish Stock Exchange amount to approximately EUR 6,282.00.
<b>Settlement</b>	It is expected that delivery of the Notes will be made on or about the Issue Date through the book-entry facilities of Euroclear and Clearstream, Luxembourg against payment therefor in euro in immediately available funds.
<b>Governing Law</b>	The Notes will be governed by the laws of the Federal Republic of Germany.
<b>Ratings</b>	The Class A1+, Class A2+, Class B, Class C, Class D, Class E and Class F Notes are expected to be rated on the Issue Date by Moody's and S&P. The Class G Notes will not be rated. It is a condition of the issue of the Notes, that each Class of Notes receives the ratings specified herein. See "RATING".
<b>Taxation</b>	<p>Payments with respect to the Notes are to be made by the Issuer net of any withholding taxes required to be deducted by law and any withholding taxes imposed with respect to the Note Collateral and/or the Issuer Guarantee.</p> <p>The Noteholders will not be entitled to gross-up payments in the event that payments on the Notes and/or payments under the Note Collateral become subject to withholding taxes and/or payments under the Issuer Guarantee become subject to any taxes, and the Noteholders will not have the right to require an early redemption of the Notes in such event. See "THE NOTES – Taxes".</p>

## RISK FACTORS

**The following is a summary of certain factors of and in connection with the Notes which prospective investors should consider before deciding to purchase the Notes. The following statements are not exhaustive: prospective investors should consider all of the information provided in this Prospectus and consult with their own professional advisers.**

### THE NOTES

#### **Liability and Limited Recourse under the Notes**

The Notes represent obligations of the Issuer only, and do not represent an interest in or obligations of the Lead Manager, the Trustee, any of the Agents, any of the Servicers, the Bank or any of their respective subsidiaries or affiliates or any affiliate of the Issuer or any other third person or entity. Neither the Notes nor the Reference Claims will be insured or guaranteed by any governmental agency or instrumentality or by the Lead Manager, the Trustee, any of the Agents, any of the Servicers, the Bank or any of their respective subsidiaries or affiliates or by any other person or entity except as described herein. Neither the Lead Manager, nor the Trustee, nor any of the Agents, nor any of the Servicers, nor the Bank, nor any of their respective subsidiaries or affiliates, nor any affiliate of the Issuer, nor any other third person or entity, assumes any liability to the Noteholders if the Issuer fails to make a payment due under the Notes.

The Issuer's ability to satisfy its payment obligations under the Notes in full is dependent upon its receiving in full the amounts payable to it under the Note Collateral and the Issuer Guarantee or the amount of the proceeds resulting from enforcement of the security granted by the Issuer to the Trustee over the Collateral pursuant to the Trust Agreement. If the Trustee enforces the claims under the Notes, such enforcement will be limited to those assets of the Issuer over which the Trustee was granted security. To the extent that such assets, or the proceeds of the realisation thereof, prove ultimately insufficient to satisfy the claims of all Noteholders in full, then any shortfall arising shall be extinguished and neither any Noteholder nor the Trustee shall have any further claims against the Issuer, *provided that* the foregoing shall be without prejudice to any termination or early redemption rights. Such assets and proceeds shall be deemed to be "ultimately insufficient" at such time when, in the reasonable opinion of the Trustee, no further assets are available and no further proceeds can be realised therefrom to satisfy any outstanding claims of the Noteholders, and neither assets nor proceeds will be so available thereafter.

In particular, the Trustee, the Bank, the Lead Manager, the Agents, the Process Agent, the Corporate Services Provider or the Account Banks shall not petition or take any other step or action for the winding up, examinership, liquidation or dissolution of the Issuer nor for the appointment of a liquidator, examiner, receiver or other person in respect of the Issuer or its assets.

#### **Credit Linked Notes**

The payment of principal of and, due to potential principal reductions, interest on the Notes is conditional upon the performance of the Reference Claims as described herein. There is no guarantee that the Noteholders will receive the full principal amount of the Notes and interest thereon and ultimately the obligations of the Issuer to pay principal under the Notes could even be reduced to EUR 1 per Note as a result of losses incurred in respect of the Reference Claims.

#### **Reference Collateral**

The Reference Claims may from time to time be secured by the Reference Collateral. Such Reference Collateral may secure one or more Reference Claims, as well as other claims of the Bank. If the records or legal obligations of the Bank provide for a particular allocation of such Reference

Collateral and/or the Reference Collateral relating to a Reference Claim arising from a syndicated Reference Loan, syndicated Reference Facility or syndicated Reference Guarantee has been allocated by an Agent Bank, in each case, as described herein, such Reference Collateral will be allocated to secure the respective Reference Claim(s) for the purpose of the Loss Allocation in accordance with such collateral allocation. In all other cases the proceeds of foreclosure on such Reference Collateral will be allocated *pro rata* to all claims, including the Reference Claim(s), secured by such Reference Collateral. Accordingly, in such cases only a portion of the proceeds from such Reference Collateral will be allocated to the relevant Reference Claim(s); such portion may change from time to time as the claims of the Bank secured by the Reference Collateral may be repaid or otherwise extinguished and new claims and new collateral allocated to the Reference Collateral and the Reference Claims, respectively.

The Bank may at any time release, or cause to be released, any Reference Collateral if it either (i) in its professional judgement concludes that it is required to do so by applicable law or contractual arrangements, or (ii) does so in the ordinary course of its business and in accordance with the Credit and Collection Policies.

In the event that a Debtor defaults on a Reference Claim secured by Reference Collateral, the relevant Servicer is required to foreclose on the Reference Collateral securing such Reference Claim in accordance with the Servicing Standards. However, there is no guarantee that the value of the portion of such Reference Collateral allocable to the relevant Reference Claim in the context of the foreclosure (less disbursements necessary for the foreclosure proceedings) will fully cover the Outstanding Nominal Amount of the Reference Claim.

The principles of Loss Allocation and the allocation of the proceeds from the Reference Collateral to the Reference Claims are described under "THE NOTES – Loss Allocation" and "DESCRIPTION OF THE REFERENCE POOL – Reference Pool Provisions – Reference Collateral" and "– Allocation of Payments and Enforcement Proceeds".

### **Compliance with Transaction Documents and Realised Losses**

Compliance with the Terms and Conditions, in particular the Eligibility Criteria, Replenishment Conditions and Servicing Standards, the Trust Agreement and other Transaction Documents is no guarantee or assurance that Realised Losses will not be incurred in respect of the Reference Claims and allocated to the Notes pursuant to Loss Allocation.

### **No Interest in the Reference Claims or Reference Collateral**

Neither the Noteholders nor the Issuer will have any right to or interest in any Reference Claim or Reference Collateral even in the case that a Realised Loss in respect of such Reference Claim has been allocated to the Notes in accordance with the Loss Allocation. See "THE NOTES - Loss Allocation".

### **Leverage**

The initial aggregate of the Class Principal Amounts of the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and the Class G Notes together with the initial Outstanding Threshold Amount will be approximately EUR 141,000,000. The initial Class Principal Amount of the Class A2+ Notes multiplied by the A2+ Increase Factor will be EUR 23,500,000. The Initial Aggregate Principal Balance of the Reference Pool will, however, be approximately EUR 1,500,000,000. Upon the occurrence of any Realised Loss, the Outstanding Threshold Amount will be reduced to zero and thereafter such Realised Loss will be allocated to reduce the Note Principal Amounts of the Class G Notes to EUR 1 per Note, then to reduce the Note Principal Amounts of the Class F Notes to EUR 1 per Note, then to reduce the Note Principal Amounts of the Class E Notes to EUR 1 per Note, then to reduce the Note Principal Amounts of the Class D Notes to EUR 1 per Note, then to reduce the Note Principal Amounts of the Class C Notes to EUR 1 per Note,

then to reduce the Note Principal Amounts of the Class B Notes to EUR 1 per Note, then to reduce the Note Principal Amounts of the Class A2+ Notes to EUR 1 per Note, *provided that* only the product of the Realised Losses and the A2+ Reduction Factor shall be allocated to reduce the Class Principal Amount of the Class A2+ Notes, and then to reduce the Note Principal Amounts of the Class A1+ Notes to EUR 1 per Note, *provided that* only the product of the Realised Losses and the A1+ Reduction Factor shall be allocated to reduce the Class Principal Amount of the Class A1+ Notes. Accordingly, the Outstanding Threshold Amount, then the Class G Notes, then the Class F Notes, then the Class E Notes, then the Class D Notes, then the Class C Notes, then the Class B Notes and then the Class A2+ Notes provide a first loss protection with respect to the Reference Pool. Since the Aggregate Principal Balance of the Reference Pool is expected, before the Scheduled Maturity Date, to exceed the Outstanding Threshold Amount together with the aggregate of the Class Principal Amounts of the Notes, the Notes, other than the Class A1+ Notes, provide protection for the Reference Pool on a leveraged basis and, as a result of such leverage, the loss risk in respect of the Notes, other than the Class A1+ Notes, is a multiple of the loss risk in respect of the Reference Pool. The leverage described above increases the risk of loss to Noteholders.

### **Trust Agreement - Interests of the Junior Investor, the Noteholders, the Class E Swap Counterparty, the A2 Senior Guarantee Counterparty and the A1 Senior Guarantee Counterparty**

Pursuant to the Trust Agreement the Trustee will carry out its duties thereunder as a trustee for the benefit of the Junior Investor, if any, the Noteholders, the Class E Swap Counterparty, the A2 Senior Guarantee Counterparty, if any, and the A1 Senior Guarantee Counterparty, if any. In the case of a conflict of interest among the interests of the A1 Senior Guarantee Counterparty, if any, the A2 Senior Guarantee Counterparty, if any, the Noteholders, the Class E Swap Counterparty and the Junior Investor, if any, priority will be given to the interests of the A1 Senior Guarantee Counterparty, if any, and the Class A1+ Noteholders, then to the interests of the A2 Senior Guarantee Counterparty, if any, and the Class A2+ Noteholders, then to the interests of the holders of the Class B Notes, then to the interests of the holders of the Class C Notes, then to the interests of the holders of the Class D Notes, then to the interests of the Class E Swap Counterparty and the holders of the Class E Notes, then to the interests of the holders of the Class F Notes, and lastly to the interests of the Junior Investor, if any, *provided that* the interests of the A1 Senior Guarantee Counterparty and the holders of the Class A1 Notes will rank *pari passu*, the interests of the A2 Senior Guarantee Counterparty and the holders of the Class A2 Notes will rank *pari passu*, and the interests of the Class E Swap Counterparty and the holders of the Class E Notes will rank *pari passu*.

See "THE TRUST AGREEMENT".

### **Trustee Resignation**

Pursuant to the Trust Agreement, the Trustee may resign at any time as a trustee for the Noteholders for good cause (*aus wichtigem Grund*). If the Trustee so resigns, for as long as no successor trustee has been appointed, the protection of the Noteholders' rights by the Trustee, including in respect of the Collateral, may be inoperative. See "THE TRUST AGREEMENT".

Further, if no successor trustee is appointed by the expiration of the 30<sup>th</sup> Business Day following the delivery of a notice of resignation by the Trustee, each Noteholder may declare due the Notes held by it by delivery of a written notice to the Issuer with a copy to the Trustee. However, even in such circumstances the foreclosure on the Collateral needs to be carried out by the resigning Trustee holding the Collateral. Accordingly, the due and timely redemption of the Notes by foreclosure on the Collateral in accordance with the Trust Agreement may be adversely affected in such circumstances. See "THE NOTES - Early Redemption for Default" and "THE TRUST AGREEMENT".

### **Early Redemption by the Noteholders**

Each Noteholder may declare due the Notes held by it by delivery of a written notice to the Issuer

with a copy to the Trustee if a Default Event in respect of such Notes occurred, *provided that* the right to declare the Notes due in respect of any Default Event shall cease to exist if such Default Event has been cured before the right is exercised. A Default Event occurs, *inter alia*, if the Trustee gives notice to the Noteholders that it will resign as Trustee pursuant to the Trust Agreement for good cause as set out herein unless a notice has been given to the Noteholders that the cause for such resignation has been remedied to the Trustee's satisfaction or a successor trustee has been appointed in accordance with the Trust Agreement as described herein. In the event that any Noteholder exercises such right, the Issuer will redeem the Notes as described herein. See "THE NOTES - Early Redemption for Default" and "THE TRUST AGREEMENT".

If no Noteholder exercises its early redemption right in such circumstances and the Trustee resigns as set out herein and no successor trustee is appointed, the Noteholders may lose the benefit of the Collateral and the protection of their rights by the Trustee generally.

### **Early Redemption by the Issuer**

The Issuer shall redeem the Notes before the Scheduled Maturity Date as described herein if an Issuer Guarantee Termination occurs. Issuer Guarantee Termination occurs: (A) on the Payment Date as of which the Issuer Guarantee is terminated by the Bank at its option (i) following the occurrence of a Regulatory Event, or (ii) following the reduction of the Aggregate Principal Balance to 10% or less of the Replenishment Cap, or (iii) falling in or after July 2012; or (B) on the date the Issuer Guarantee is terminated because of the occurrence of an Issuer Event of Default or a Bank Event of Default.

See "THE NOTES - Early Redemption by the Issuer".

### **Collateral and Trustee Claim**

On the Issue Date, the Issuer will pledge (*verpfänden*) the Note Collateral as well as all its present and future claims and rights under the Transaction Documents (other than the Corporate Services Agreement, the First Pledge Agreement and the Irish Security Agreement) to secure the Trustee Claim (*Treuhänderanspruch*) under the Trust Agreement.

The Trustee Claim entitles the Trustee to demand that all present and future obligations of the Issuer under the Notes be fulfilled. See "THE TRUST AGREEMENT" and "THE COLLATERAL".

There is no authority to the effect that the Trustee Claim (*Treuhänderanspruch*) of the Trustee against the Issuer established by the Trust Agreement may not be validly secured by a pledge of the relevant Collateral pursuant to the Trust Agreement. See "THE TRUST AGREEMENT". However, as there is no specific authority confirming the validity of such pledge either, the validity of such pledge is subject to some degree of legal uncertainty.

**Notwithstanding the Collateral, the amount of principal of and, due to potential principal reductions, interest on the Notes may be reduced as a result of Realised Losses incurred with respect to the Reference Claims and only the obligations of the Issuer to pay any amount of principal and interest determined to be due to the Noteholders in accordance with the Terms and Conditions, which may be reduced by such Realised Losses, will have the benefit of the Collateral.**

### **Senior Pledge of the Bank**

The pledge of the Note Collateral and any other security interest in respect of the Note Collateral granted to the Trustee for the benefit of the Noteholders in accordance with the Trust Agreement will be subject to and rank junior to a pledge and other security interest in respect of the Note Collateral for the benefit of the Bank as security for the Issuer's obligations under the Issuer Guarantee as described herein.

## **Irish Law**

It is unclear how the Irish courts would interpret the pledges purported to be created pursuant to the First Pledge Agreement and the Trust Agreement (together, the "**Security Documents**"). It is likely that, subject to the Security Documents' constituting valid pledges (*Pfandrecht*) as a matter of their governing laws, the Irish courts would view these pledges as creating a fixed charge or a floating charge.

It is the essence of a fixed charge that the person creating the charge does not have liberty to deal with the assets which are the subject matter of the security in the sense of disposing of such assets or expending or appropriating the monies or claims constituting such assets. In particular, the Irish courts have held that, in order to create a fixed charge over receivables, it is necessary to oblige the chargor to pay the proceeds of collection of the receivables into a designated bank account and to prohibit the chargor from withdrawing or otherwise dealing with the monies standing to the credit of such account without the consent of the chargee.

Depending upon the level of control actually exercised by the chargor, there is therefore a possibility that the fixed security over the Issuer's account and the authorised investments would be regarded by the Irish courts as a floating charge.

Floating charges have certain weaknesses, including the following:

- (i) they have weak priority against purchasers (who are not on notice of any negative pledge contained in the floating charge) and chargees of the assets concerned and against lien holders, execution creditors and creditors with rights of set-off;
- (ii) they rank after certain preferential creditors, such as claims of employees and certain taxes on winding-up;
- (iii) they rank after certain insolvency remuneration expenses and liabilities;
- (iv) the examiner of a company has certain rights to deal with the property covered by the floating charge; and
- (v) they rank after fixed charges.

## **Geographical and Industry Concentration of the Debtors**

Reference Claims may be concentrated in certain countries or locations. See "DESCRIPTION OF THE REFERENCE POOL – Information Tables regarding the Initial Reference Pool – Geographical Distribution – Bundesländer". Any deterioration in the economic conditions of areas in which the Debtors are located or any deterioration in the economic conditions of other areas that causes an adverse effect on the ability of the Debtors to repay the Reference Claims could increase the risk of losses on the Reference Claims. A concentration of the Debtors in such areas may therefore result in a greater risk of loss than if such concentration had not been present.

Further, although the Debtors are involved in a range of different industry sectors, there may be a higher concentration of Debtors in a particular industry sector. See "DESCRIPTION OF THE REFERENCE POOL – Information Tables regarding the Initial Reference Pool – Distribution by Moody's Industry Sectors" and "– Distribution by Standard & Poor's Industry Sectors". Deterioration in the economic conditions in such industry sector may adversely affect the ability of the Debtors to repay the Reference Claims and therefore could increase the risk of losses on the Reference Claims. A greater concentration of the Debtors in particular industry sector(s) may therefore result in a greater risk of loss than if such concentration had not been present.

## **Reliance on the Creditworthiness of the Bank**

The net proceeds from the issue of the Notes will be deposited onto the Cash Deposit Account on the Issue Date and will constitute the Note Collateral. The Bank will be obliged to pay the Guarantee Fees under the Issuer Guarantee.

These are the Issuer's only sources of financing. Accordingly, the ability of the Issuer to meet its obligations under the Notes will depend on its receipt of payments under the Note Collateral and the payment of the Guarantee Fee pursuant to the Issuer Guarantee. In addition, termination of the Issuer Guarantee, *inter alia*, as a result of the Bank's default under the Issuer Guarantee, will result in early redemption of the Notes as described herein. See "THE NOTES – Early Redemption by the Issuer".

The Issuer is relying on the creditworthiness and timely performance of the Bank in respect of the receipt of payments from the Issuer Guarantee.

## **Limited Information**

The Bank is under no obligation and will not provide to the Issuer, the Trustee or the Noteholders financial or other information with respect to the Reference Claims or the Debtors except as specifically set out in the Notes and the Trust Agreement. Except as set out in the Notes and the Trust Agreement, the Issuer and the Bank will have no obligation and will not keep the Noteholders and/or the Trustee informed as to the performance of the Reference Claims, the compliance of the Reference Pool with the Reference Pool Provisions and as to matters arising in relation to the Debtors or any other debtors or guarantors of the Reference Claims, including information on the Bank's other exposures to any Debtor or whether or not circumstances exist under which there is a possibility of the occurrence of a Credit Event and/or Realised Loss. Further, the Noteholders will have no right to inspect the internal records of the Bank.

## **No Independent Investigation**

Neither the Lead Manager nor the Issuer nor the Trustee has conducted or will conduct any independent investigations of the Reference Pool. The Trustee will only conduct such reviews and verifications in respect of the Reference Pool as, and only to the extent, set out in the Trust Agreement.

## **Reliance on Administration and Collection Procedures**

The Bank, in its capacity as Servicer, and its subsidiaries and affiliates acting as Servicers, will carry out the administration, collection and enforcement of the Reference Claims, including foreclosure on the related Reference Collateral, in accordance with the Credit and Collection Policies (in the case of Reference Claims arising under syndicated Reference Loans, syndicated Reference Facilities or syndicated Reference Guarantees, subject to the servicing conditions under such Reference Loan documentation, Reference Facility documentation or Reference Guarantee documentation, as applicable) subject only to the Servicing Principles (see "REFERENCE POOL SERVICING").

In some cases the applicable servicing requirements with respect to Reference Claims arising under syndicated Reference Loans, syndicated Reference Facilities or syndicated Reference Guarantees may be changed by decision of a majority of syndicate banks, even without the consent of the Bank. Moreover, in the case of Reference Claims arising under syndicated Reference Loans, syndicated Reference Facilities or syndicated Reference Guarantees in respect of which none of the Servicers acts as the agent bank, the third party Agent Bank will carry out administration, collections and enforcement of the Reference Claims, including foreclosure on the related Reference Collateral, if any, in accordance with the servicing requirements of the documentation governing the relevant Reference Loan, Reference Facility or Reference Guarantee and also to a material degree in accordance with their own credit and collection policies. The Bank, as a syndicate bank, will have only limited means under the documentation governing the relevant Reference Loan, Reference



Facility or Reference Guarantee to influence the servicing of the relevant Reference Claims by the Agent Banks. Subject to certain conditions being met, the Bank and any of its subsidiaries and affiliates acting as Servicers may be substituted in their function as Servicer of a Reference Claim by a subsidiary of the Bank, another servicing company specialised in the servicing and administration of loans or any other entity (see "REFERENCE POOL SERVICING - Change in Servicer").

Accordingly, the Noteholders are relying on the business judgement and practices of the Servicers, or in certain cases the relevant Agent Banks, in administering the Reference Claims, enforcing claims against Debtors, including taking decisions with respect to enforcement and/or foreclosure on the related Reference Collateral and also, as the case may be with respect to Reference Claims arising under syndicated Reference Loans, syndicated Reference Facilities or syndicated Reference Guarantees, on decisions of majority of syndicate banks with which the Bank may not have agreed and which could, therefore, be contrary to the Servicing Standards.

### **Replenishment and Changes to the Characteristics of the Reference Pool**

On the last calendar day of any month during the Replenishment Period, the Bank has the right at its sole discretion, subject to certain Replenishment Conditions being met, to add new Reference Claims to the Reference Pool. Such Replenishment may change the characteristics of the Reference Pool.

On any Replenishment Date, the Bank has the right at its sole discretion, subject to certain conditions being met, to substitute certain Reference Claims with a new Reference Claim or new Reference Claims, or any portion thereof. Such Substitution may change the characteristics of the Reference Pool.

See "DESCRIPTION OF THE REFERENCE POOL – Reference Pool Provisions – Replenishment".

### **Conflicts of Interest**

The Bank is acting in a number of capacities in connection with the Transaction. The Bank acting in connection with the Transaction will have only the duties and responsibilities expressly agreed to by it in the relevant capacity and will not, by virtue of it or any of its subsidiaries or affiliates acting in any other capacity, be deemed to have any other duties or responsibilities or be deemed to be held to a standard of care other than as expressly provided with respect to each such capacity. The Bank in its various capacities in connection with the Transaction may enter into business dealings from which it may derive revenues and profits without any duty to account therefor in connection with the Transaction.

The Bank may hold and/or service other claims against the Debtors other than the Reference Claims. The interests or obligations of the Bank in its respective capacities with respect to such other claims may in certain aspects conflict with the interests of the Noteholders.

The Bank may engage in commercial relationships, in particular, be lender, provide investment banking and other financial services to the Debtors and other parties. In such relationships the Bank is not obliged to take into account the interests of the Noteholders. Accordingly, because of these relationships, potential conflicts of interest may arise out of the Transaction.

### **Limited Liquidity**

There is currently no secondary market for the Notes. Application has been made to the Irish Stock Exchange for the Class A1+ Notes, the Class A2+ Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and the Class G Notes to be admitted to the Official List and trading on its regulated market. However, there can be no assurance that a secondary market for the Notes will develop or that a market will develop for all Classes of Notes or, if it does develop, that it will continue.

## **Taxation**

Payments with respect to the Notes are to be made by the Issuer net of any withholding taxes required to be deducted by law and any withholding taxes imposed with respect to the Note Collateral and/or the Issuer Guarantee.

The Noteholders will not be entitled to gross-up payments in the event that the payments on the Notes and/or payments under the Note Collateral become subject to withholding taxes and/or payments under the Issuer Guarantee become subject to any taxes, and the Noteholders will not have the right to require an early redemption of the Notes in such event. See "THE NOTES – Taxes".

The Issuer will redeem all of the Notes if the Bank in its sole discretion elects to have an Issuer Guarantee Termination occur as a result of withholding or deduction for taxes with respect to payments on the Notes, the Note Collateral, the Issuer Guarantee, the A1 Senior Guarantee, if any, the A2 Senior Guarantee, if any, or any other agreement relating to this Transaction. See "THE NOTES – Early Redemption by the Issuer".

See "TAXATION".

## **THE ISSUER**

### **Preferred creditors under Irish law**

Upon an insolvency of an Irish incorporated company such as the Issuer, when applying the proceeds of assets subject to fixed security which have been realised in the course of a liquidation or receivership, the claims of a limited category of preferential creditors will take priority over the claims of creditors holding the relevant fixed security. These preferred claims include the remuneration, costs and expenses properly incurred by any examiner of the company which have been approved by the Irish courts. See also "Examinership" below.

The holder of a fixed security over the book debts of an Irish incorporated company which would include the Issuer may be required by the Irish Revenue Commissioners, by notice in writing, to pay to them sums equivalent to those which the holder thereafter receives in payment of debts due to it by the company. Where the holder of the security has given notice to the Irish Revenue Commissioners of the creation of the security within 21 days of its creation, the holder's liability is limited to the amount of certain outstanding Irish tax liabilities of the company (including liabilities in respect of value added tax) arising after the issuance of a notice by the Irish Revenue Commissioners to the holder of the fixed security.

The Irish Revenue Commissioners may also attach any debt due to an Irish tax resident company by another person in order to discharge any liabilities of the company in respect of outstanding tax whether the liabilities are due on its own account or as an agent or trustee. The scope of this right of the Irish Revenue Commissioners has not yet been considered by the Irish courts and it may override the rights of holders of security (whether fixed or floating) over the debt in question.

In relation to the disposal of assets of an Irish tax resident company which are subject to security, a person entitled to the benefit of the security may be liable for tax in relation to any capital gains made by the company on a disposal of those assets on exercise of the security.

### **Examinership**

Examination is a court procedure available under the Companies (Amendment) Act 1990, as amended (the "1990 Act") to facilitate the survival of Irish companies in financial difficulties.

The Issuer, the directors of the Issuer, a contingent, prospective or actual creditor of the Issuer, or shareholders of the Issuer holding, at the date of presentation of the petition, not less than one-tenth of the voting share capital of the Issuer are each entitled to petition the court for the appointment of an examiner. The examiner, once appointed, has the power to set aside contracts and arrangements entered into by the company after his appointment and, in certain circumstances, can avoid a negative pledge given by the company prior to his appointment. Furthermore, he may sell assets which are the subject of a fixed charge. However, if such power is exercised he must account to the holders of the fixed charge for the amount realised and discharge the amount due to them out of the proceeds of sale.

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

In considering proposals by the examiner, it is likely that secured and unsecured creditors would form separate classes of creditors. In the case of the Issuer, if the Trustee represented the majority in number and value of claims within the secured creditor class (which would be likely given the restrictions agreed to by the Issuer in the Notes), the Trustee would be in a position to reject any proposal not in favour of the holders of Notes. The Trustee would also be entitled to argue at the High Court hearing at which the proposed scheme of arrangement is considered that the proposals are unfair and inequitable in relation to the holders of the Notes, especially if such proposals included a writing down to the value of amounts due by the Issuer to the holders of Notes.

The primary risks to the holders of Notes if an examiner were to be appointed with respect to the Issuer are as follows:

- the potential for a scheme of arrangement being approved involving the writing down or re-scheduling of the debt due by the Issuer to the holders of Notes as secured by the Trust Agreement and the Irish Security Agreement (as defined below);
- the potential for the examiner to seek to set aside any negative pledge in the Notes, the Trust Agreement or the Irish Security Agreement, prohibiting the creation of security or the incurring of borrowings by the Issuer to enable the examiner to borrow to fund the Issuer during the protection period; and
- in the event that a scheme of arrangement is not approved and the Issuer subsequently goes into liquidation, the examiner's remuneration and expenses (including certain borrowings incurred by the examiner on behalf of the Issuer and approved by the Irish High Court) will take priority over the amounts secured by the security granted pursuant to the Trust Agreement and the Irish Security Agreement. See "RISK FACTORS - Preferred creditors under Irish law".

### **Not a Bank Deposit**

Any investment in the Notes does not have the status of a bank deposit in Ireland and is not within the scope of the deposit protection scheme operated by the Irish Financial Services Regulatory Authority. The Issuer is not regulated by the Irish Financial Services Regulatory Authority by virtue of the issue of the Notes.

## THE NOTES

The following is the text of the Terms and Conditions applicable to each Class of Notes which will be attached to each Global Note. In case of any overlap or inconsistency in the definition of a term or expression in the Terms and Conditions and elsewhere in this Prospectus, the definition in the Terms and Conditions will prevail.

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**THE PAYMENT OF PRINCIPAL OF AND, DUE TO POTENTIAL PRINCIPAL REDUCTIONS, INTEREST ON THE NOTES IS CONDITIONAL UPON THE PERFORMANCE OF THE REFERENCE CLAIMS AS SET OUT IN SECTION 8 (LOSS ALLOCATION) AND SECTION 9 (UNJUSTIFIED LOSS ALLOCATION).**

**THERE IS NO GUARANTEE THAT THE NOTEHOLDERS SHALL RECEIVE THE FULL PRINCIPAL AMOUNT OF THE NOTES AND INTEREST THEREON AND ULTIMATELY THE OBLIGATIONS OF THE ISSUER TO PAY PRINCIPAL UNDER THE NOTES COULD EVEN BE REDUCED TO EUR 1 PER NOTE AS A RESULT OF LOSSES INCURRED IN RESPECT OF THE REFERENCE CLAIMS.**

**NEITHER THE NOTEHOLDERS NOR THE ISSUER SHALL HAVE ANY RIGHT TO OR INTEREST IN ANY REFERENCE CLAIM EVEN IN THE CASE THAT A REALISED LOSS IN RESPECT OF SUCH REFERENCE CLAIM HAS BEEN ALLOCATED TO THE NOTES IN ACCORDANCE WITH THE LOSS ALLOCATION.**

**THE NOTES REPRESENT OBLIGATIONS OF THE ISSUER ONLY, AND DO NOT REPRESENT AN INTEREST IN OR OBLIGATIONS OF THE LEAD MANAGER, THE TRUSTEE, ANY OF THE AGENTS, ANY OF THE SERVICERS, THE BANK OR ANY OF THEIR RESPECTIVE SUBSIDIARIES OR AFFILIATES OR ANY AFFILIATE OF THE ISSUER OR ANY OTHER THIRD PERSON OR ENTITY. NEITHER THE NOTES NOR THE REFERENCE CLAIMS WILL BE INSURED OR GUARANTEED BY ANY GOVERNMENTAL AGENCY OR INSTRUMENTALITY OR BY THE LEAD MANAGER, THE TRUSTEE, ANY OF THE AGENTS, ANY OF THE SERVICERS, THE BANK OR ANY OF THEIR RESPECTIVE SUBSIDIARIES OR AFFILIATES OR BY ANY OTHER PERSON OR ENTITY EXCEPT AS DESCRIBED HEREIN. NEITHER THE LEAD MANAGER, NOR THE TRUSTEE, NOR ANY OF THE AGENTS, NOR ANY OF THE SERVICERS, NOR THE BANK, NOR ANY OF THEIR RESPECTIVE SUBSIDIARIES OR AFFILIATES, NOR ANY AFFILIATE OF THE ISSUER, NOR ANY OTHER THIRD PERSON OR ENTITY, ASSUMES ANY LIABILITY TO THE NOTEHOLDERS IF THE ISSUER FAILS TO MAKE A PAYMENT DUE UNDER THE NOTES.**

### 1. NOTES

#### 1.1 Principal Amounts; Definitions

CoSMO Finance 2008-1 Limited, incorporated under the laws of Ireland as a private limited company with its registered office at 25-26 Windsor Place, Lower Pembroke Street, Dublin 2, Ireland (the "**Issuer**") will issue on October 7, 2008 (the "**Issue Date**") the following classes of credit linked notes in bearer form (each a "**Class**", and collectively, the "**Notes**") pursuant to these terms and conditions (the "**Terms and Conditions**"):

- (a) Class A1+ Floating Rate Credit Linked Notes (the "**Class A1+ Notes**") which are issued in an initial aggregate principal amount of EUR 500,000 and divided into 10 Class A1+ Notes, each having an initial principal amount of EUR 50,000,
- (b) Class A2+ Floating Rate Credit Linked Notes (the "**Class A2+ Notes**") which are issued

in an initial aggregate principal amount of EUR 500,000 and divided into 10 Class A2+ Notes, each having an initial principal amount of EUR 50,000,

- (c) Class B Floating Rate Credit Linked Notes (the "**Class B Notes**") which are issued in an initial aggregate principal amount of EUR 38,400,000 and divided into 384 Class B Notes, each having an initial principal amount of EUR 100,000,
- (d) Class C Floating Rate Credit Linked Notes (the "**Class C Notes**") which are issued in an initial aggregate principal amount of EUR 21,000,000 and divided into 210 Class C Notes, each having an initial principal amount of EUR 100,000,
- (e) Class D Floating Rate Credit Linked Notes (the "**Class D Notes**") which are issued in an initial aggregate principal amount of EUR 18,000,000 and divided into 180 Class D Notes, each having an initial principal amount of EUR 100,000,
- (f) Class E Floating Rate Credit Linked Notes (the "**Class E Notes**") which are issued in an initial aggregate principal amount of EUR 19,000,000 and divided into 190 Class E Notes, each having an initial principal amount of EUR 100,000,
- (g) Class F Floating Rate Credit Linked Notes (the "**Class F Notes**") which are issued in an initial aggregate principal amount of EUR 8,600,000 and divided into 86 Class F Notes, each having an initial principal amount of EUR 100,000, and
- (h) Class G Floating Rate Credit Linked Notes (the "**Class G Notes**") which are issued in an initial aggregate principal amount of EUR 13,000,000 and divided into 130 Class G Notes, each having an initial principal amount of EUR 100,000.

Terms used but not defined in these Terms and Conditions have the same meaning as in Appendix A (The Trust Agreement), Appendix B (Reference Pool Provisions) or Appendix C (Servicing Principles) attached hereto, each of which forms an integral part of the Terms and Conditions.

The holders of the Notes are referred to as the "**Noteholders**".

## 1.2 Global Notes

Each Class of Notes is initially represented by a temporary global bearer note (each a "**Temporary Global Note**") without interest coupons. The Temporary Global Notes shall be exchangeable, as provided in Section 1.3 (Notes – Exchange of Temporary Global Notes) for permanent global bearer notes (each a "**Permanent Global Note**") without interest coupons representing each such Class. Each Permanent Global Note shall be kept in custody by Citibank, N.A., London Branch, 21<sup>st</sup> Floor, Citigroup Centre, Canada Square, Canary Wharf, London E14 5LB, United Kingdom, or any successor as common depositary (in such capacity, the "**Common Depositary**") for Euroclear Bank S.A./N.V. as operator of the Euroclear System ("**Euroclear**"), Clearstream Banking, société anonyme ("**Clearstream, Luxembourg**"), until all obligations of the Issuer under the Class represented by it have been satisfied. Definitive Notes and interest coupons shall not be issued.

Each Permanent Global Note and each Temporary Global Note is also referred to herein as a "**Global Note**".

## 1.3 Exchange of Temporary Global Notes

The Temporary Global Notes shall be exchanged for the Permanent Global Notes on a date (the "**Exchange Date**") not earlier than 40 calendar days after the date of issue of the Temporary

Global Notes upon delivery by the relevant accountholders (each a "**Euroclear Participant**" or a "**Clearstream, Luxembourg Participant**") of certificates in the form which forms part of the Temporary Global Notes and are available from the Principal Paying Agent for such purpose, to the effect that the beneficial owner or owners of the Notes represented by the relevant Temporary Global Note is not a U.S. person or are not U.S. persons other than certain financial institutions or certain persons holding through such financial institutions. Each Permanent Global Note delivered in exchange for the relevant Temporary Global Note shall be delivered only outside of the United States. "**United States**" means, for the purposes of this Section 1.3, the United States of America (including the States thereof and the District of Columbia) and its possessions (including Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands).

Any exchange of a Temporary Global Note pursuant to this Section 1.3 shall be made free of charge to the Noteholders.

#### **1.4 Execution**

Each Global Note is manually signed by or on behalf of the Issuer and authenticated by the Principal Paying Agent.

## **2. RIGHTS AND OBLIGATIONS UNDER THE NOTES**

### **2.1 Status of the Notes**

The Notes constitute direct and unsubordinated obligations of the Issuer, ranking *pari passu* among themselves and at least *pari passu* with all other current and future unsubordinated obligations of the Issuer, subject to Loss Allocation, Unjustified Loss Allocation and the Collateral pursuant to Section 3 (Collateral) and the redemption of the Notes in accordance with Section 10.1 (Redemption – Amortisation of the Notes) and Section 10.2 (Redemption – Scheduled Maturity and Legal Maturity), if applicable.

### **2.2 Obligations under the Notes**

The Notes represent obligations of the Issuer only, and do not represent an interest in or obligations of the Lead Manager, the Trustee, any of the Agents, any of the Servicers, the Bank or any of their respective subsidiaries or affiliates or any affiliate of the Issuer or any other third person or entity. Neither the Notes nor the Reference Claims will be insured or guaranteed by any governmental agency or instrumentality or by the Lead Manager, the Trustee, any of the Agents, any of the Servicers, the Bank or any of their respective subsidiaries or affiliates or by any other person or entity except as described herein. Neither the Lead Manager, nor the Trustee, nor any of the Agents, nor any of the Servicers, nor the Bank, nor any of their respective subsidiaries or affiliates, nor any affiliate of the Issuer, nor any other third person or entity, assumes any liability to the Noteholders if the Issuer fails to make a payment due under the Notes.

The payment of principal of and, due to potential principal reductions, interest on the Notes is conditional upon the performance of the Reference Claims as set out in Section 8 (Loss Allocation) and Section 9 (Unjustified Loss Allocation). There is no guarantee that the Noteholders shall receive the full principal amount of the Notes and interest thereon and ultimately the obligations of the Issuer to pay principal under the Notes could even be reduced to EUR 1 per Note as a result of losses incurred in respect of the Reference Claims.

### **2.3 Limited Recourse**

The Issuer's ability to satisfy its payment obligations under the Notes in full is dependent upon

its receiving in full the amounts payable to it under the Note Collateral and the Issuer Guarantee or the amount of the proceeds resulting from enforcement of the security granted by the Issuer to the Trustee over the Collateral pursuant to the Trust Agreement. If the Trustee enforces the claims under the Notes, such enforcement will be limited to those assets of the Issuer over which the Trustee was granted security. To the extent that such assets, or the proceeds of the realisation thereof, prove ultimately insufficient to satisfy the claims of all Noteholders in full, then any shortfall arising shall be extinguished and neither any Noteholder nor the Trustee shall have any further claims against the Issuer, *provided that* the foregoing shall be without prejudice to any termination or early redemption rights. Such assets and proceeds shall be deemed to be "ultimately insufficient" at such time when, in the reasonable opinion of the Trustee, no further assets are available and no further proceeds can be realised therefrom to satisfy any outstanding claims of the Noteholders, and neither assets nor proceeds will be so available thereafter.

## 2.4 No Interest in Reference Claims

Neither the Noteholders nor the Issuer shall have any right to or interest in any Reference Claim even in the case that a Realised Loss in respect of such Reference Claim has been allocated to the Notes in accordance with the Loss Allocation.

## 3. COLLATERAL

### 3.1 Collateral

The Issuer shall:

- (i) pledge (*verpfänden*) to the Trustee the Note Collateral and all its present and future claims and rights under the Transaction Documents (other than the Corporate Services Agreement, the Irish Security Agreement and the First Pledge Agreement), in each case, to secure the Trustee Claim under the Trust Agreement. The Trustee Claim entitles the Trustee to demand that all present and future obligations of the Issuer under the Notes be fulfilled, as set out in Appendix A to the Terms and Conditions; and
- (iii) charge and assign by way of security all its present and future claims, rights, title and interest in and to the corporate services agreement, as amended from time to time (the "**Corporate Services Agreement**") between the Issuer, the Trustee and Structured Finance Management (Ireland) Limited, 25-26 Windsor Place, Lower Pembroke Street, Dublin 2, Ireland as corporate services provider of the Issuer (the "**Corporate Services Provider**") dated October 2, 2008 (together with the collateral and the claims and rights pledged as set out under (i) above, the "**Collateral**") to the Trustee as security for the Trustee Claim (*Treuhänderanspruch*) pursuant to an Irish security agreement, as amended from time to time (the "**Irish Security Agreement**") between the Issuer and the Trustee dated October 7, 2008.

The pledge over the Note Collateral will be subject and rank junior to the first ranking pledge (*Pfandrecht*) for the benefit of the Bank as security for the obligations of the Issuer under the Issuer Guarantee towards the Bank.

### 3.2 Collateral, Interest and Principal

**Notwithstanding the Collateral, the amount of principal of and, due to potential principal reductions, interest on the Notes may be reduced as a result of Realised Losses incurred with respect to the Reference Claims and only the obligations of the Issuer to pay any amount of principal and interest determined to be due to the Noteholders in accordance with the Terms and Conditions, which may be reduced by such Realised Losses, shall**

**have the benefit of the Collateral.**

## **4. TRUSTEE**

### **4.1 Trust Agreement**

For the benefit of the Noteholders, the Junior Investor, if any, the Class E Swap Counterparty, the A2 Senior Guarantee Counterparty, if any, and the A1 Senior Guarantee Counterparty, if any, the Issuer has entered into a trust agreement dated October 7, 2008, as amended from time to time (the "**Trust Agreement**") with Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft, Schwannstrasse 6, 40476 Düsseldorf, Germany (the "**Trustee**") and the Bank. The text of the Trust Agreement (excluding the Schedules thereto) is attached as Appendix A to the Terms and Conditions and constitutes an integral part of the Terms and Conditions. The Notes, including the Terms and Conditions, the Trust Agreement, the Agency Agreement, the Cash Administration Agreement, the Cash Deposit Account Agreement, the Corporate Services Agreement, the First Pledge Agreement, the Irish Security Agreement, the Issuer Guarantee, the Subscription Agreement and the Transaction Account Agreement, as amended from time to time, are referred to as the "**Transaction Documents**". The Transaction Documents together with the conclusion and performance of the Transaction Documents as well as all other acts, undertakings and activities connected therewith are referred to as the "**Transaction**".

### **4.2 Obligation to Maintain a Trustee**

As long as any Notes are outstanding the Issuer shall ensure that a trustee is appointed at all times who has undertaken substantially the same functions and obligations as the Trustee pursuant to the Notes, including the Terms and Conditions and the Trust Agreement.

## **5. REFERENCE POOL**

The payment of principal of and, due to potential principal reductions, interest on the Notes is conditional upon the performance of a reference pool of certain claims (the "**Reference Pool**") as set out in Section 8 (Loss Allocation) and Section 9 (Unjustified Loss Allocation). The Reference Pool is constituted in accordance with and must comply with certain requirements and conditions (the "**Reference Pool Provisions**") set out in Appendix B attached to the Terms and Conditions. The Reference Pool Provisions constitute an integral part of the Terms and Conditions.

## **6. PAYMENTS**

### **6.1 General**

Payments in respect of the Notes shall be made by wire transfer of same day funds to, or to the order of, the Principal Paying Agent for on-payment to Euroclear and Clearstream, Luxembourg, as relevant, for credit to the accounts held by the relevant Euroclear Participants and Clearstream, Luxembourg Participants upon due certification as provided in Section 1.3 (Notes – Exchange of Temporary Global Notes) for subsequent transfer to the Noteholders.

### **6.2 Payments of Interest on Temporary Global Notes**

Payments of interest in respect of any Notes represented by a Temporary Global Note shall be made to Euroclear and Clearstream, Luxembourg, as relevant, for credit to the accounts held by the relevant Euroclear Participants and Clearstream, Luxembourg Participants upon due



certification as provided in Section 1.3 (Notes – Exchange of Temporary Global Notes) for subsequent transfer to the Noteholders.

### **6.3 Discharge**

All payments in respect of any Note made by or on behalf of the Issuer to Euroclear and Clearstream, Luxembourg, as relevant, shall discharge the liability of the Issuer under such Note to the extent of the sums so paid.

The Issuer and the Principal Paying Agent may call and, except in the case of manifest error, shall be at liberty to accept and place full reliance on as sufficient evidence thereof a certificate or letter of confirmation issued on behalf of any clearing system or any form of record made by any of them to the effect that at any particular time or throughout any particular period any particular person is, was, or will be shown in the records as a Noteholder of a particular Note.

### **6.4 Business Day**

If the date for any payment in respect of any Note is not a Business Day, such payment shall not be made until the next succeeding day which is a Business Day unless it would thereby fall into the next calendar month, in which case the payment shall be made on the immediately preceding Business Day. "**Business Day**" means a day which is a TARGET Settlement Day, a Frankfurt Business Day, a London Business Day and a Dublin Business Day. "**TARGET Settlement Day**" means a day on which TARGET2 (the Trans-European Automated Real-time Gross Settlement Express Transfer system) is open for the settlement of payments in Euro. "**Frankfurt Business Day**" means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) and foreign exchange markets settle payments in Frankfurt am Main, Germany, and on which TARGET settles payments. "**London Business Day**" means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) and foreign exchange markets settle payments in London, United Kingdom, and on which TARGET settles payments. "**Dublin Business Day**" means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) and foreign exchange markets settle payments in Dublin, Ireland, and on which TARGET settles payments.

## **7. PAYMENTS OF INTEREST**

### **7.1 Accrual Basis**

The Note Principal Amount shall bear interest from October 7, 2008 (the "**Issue Date**") until the close of the day (both days inclusive) preceding the day on which such amount has been redeemed in full or reduced to EUR 1 by allocation of Realised Losses pursuant to the Loss Allocation. "**Note Principal Amount**" of any Note means with respect to any date an amount (rounded, if necessary, to the nearest EUR 0.01, with EUR 0.005 being rounded upwards) equal to the initial principal amount of such Note as, on or before such date, (i) reduced by any Realised Losses allocated to such Note, (ii) increased as a result of any Unjustified Loss Allocation procedure and (iii) reduced by any amounts paid on such Note in respect of principal. "**Class Principal Amount**" means, with respect to each Class, the aggregate of the Note Principal Amounts of such Class.

### **7.2 Payment Dates**

Without prejudice to Section 13 (Taxes), third paragraph, and Section 11.2 (Early Redemption for Default – Method and Amount), payments of interest on the Notes to the Noteholders shall

become due and payable quarterly in arrear, on the 29<sup>th</sup> calendar day of January, April, July and October of each year, subject to Section 6.4 (Payments – Business Day) (each a "**Payment Date**"). The first Payment Date shall be in January 2009.

### 7.3 Interest Amount

The amount of interest payable in respect of each Note on any Payment Date (the "**Interest Amount**") shall be calculated by applying the Interest Rate for the relevant Interest Accrual Period to its Note Principal Amount outstanding as of the immediately preceding Payment Date or the Issue Date (in the case of the first Payment Date), multiplying the result by the actual number of days in the relevant Interest Accrual Period divided by 360 (Actual/360 International Swaps and Derivatives Association, Inc. (ISDA)), and rounding the result to the nearest EUR 0.01 (with EUR 0.005 being rounded upwards).

### 7.4 Interest Accrual Periods

"**Interest Accrual Period**" means for all Classes of Notes, in respect of the first Payment Date, the period commencing on (and including) the Issue Date and ending on (but excluding) the first Payment Date and in respect of any subsequent Payment Date, the period commencing on (and including) the immediately preceding Payment Date and ending on (but excluding) such subsequent Payment Date.

### 7.5 Interest Rates

The interest rate payable on the Notes for each Interest Accrual Period (each an "**Interest Rate**") shall be

- in the case of the Class A1+ Notes, EURIBOR plus 1.50% per annum,
- in the case of the Class A2+ Notes, EURIBOR plus 2.00% per annum,
- in the case of the Class B Notes, EURIBOR plus 2.50% per annum,
- in the case of the Class C Notes, EURIBOR plus 4.25% per annum,
- in the case of the Class D Notes, EURIBOR plus 6.50% per annum,
- in the case of the Class E Notes, EURIBOR plus 9.75% per annum,
- in the case of the Class F Notes, EURIBOR plus 13.00% per annum, and
- in the case of the Class G Notes, EURIBOR plus 16.00% per annum.

"**EURIBOR**" for each Interest Accrual Period means the rate for deposits in euro for a period of three months (*provided that* with respect to the first Interest Accrual Period, such rate shall be interpolated between three and four months and *provided further that* with respect to the Interest Accrual Period preceding the Legal Maturity Date, any Final Redemption Date or any date of final redemption pursuant to Section 11.2(b), such rate shall be with respect to a period of four months) which appears on Reuters Page EURIBOR01 (or such other page as may replace such page on that service for the purpose of displaying Brussels interbank offered rate quotations of major banks) as of 11:00 a.m. (Brussels time) on the second TARGET Settlement Day immediately preceding the commencement of such Interest Accrual Period (each a "**EURIBOR Determination Date**"), all as determined by the Principal Paying Agent.

If Reuters Page EURIBOR01 is not available or if no such quotation appears thereon, in each case, as at such time, the Principal Paying Agent shall request the principal Euro-zone office of the Reference Banks selected by it to provide the Principal Paying Agent with its offered quotation (expressed as a percentage rate per annum) for three-month deposits in euro at approximately 11:00 a.m. (Brussels time) on the relevant EURIBOR Determination Date to prime banks in the Euro-zone inter-bank market for the relevant Interest Accrual Period and in an amount that is representative for a single transaction in that market at that time. If two or more of the selected Reference Banks provide the Principal Paying Agent with such offered

quotations, EURIBOR for such Interest Accrual Period shall be the arithmetic mean of such offered quotations (rounded if necessary to the nearest one thousandth of a percentage point, with 0.0005 being rounded upwards). If on the relevant EURIBOR Determination Date fewer than two of the selected Reference Banks provide the Principal Paying Agent with such offered quotations, EURIBOR for such Interest Accrual Period shall be the rate per annum which the Principal Paying Agent determines as being the arithmetic mean (rounded if necessary to the nearest one thousandth of a percentage point, with 0.0005 being rounded upwards) of the rates communicated to (and at the request of) the Principal Paying Agent by major banks in the Euro-zone, selected by the Principal Paying Agent, at approximately 11:00 a.m. (Brussels time) on such EURIBOR Determination Date for loans in euro to leading European banks for such Interest Accrual Period and in an amount that is representative for a single transaction in that market at that time. "**Reference Banks**" means four major banks in the Euro-zone inter-bank market. "**Euro-zone**" means the region comprising member states of the European Union that have adopted the single currency, the euro, in accordance with the EC Treaty. "**EC Treaty**" means the Treaty establishing the European Community (signed in Rome on March 25, 1957), as amended from time to time, including by the Treaty on European Union (signed in Maastricht on February 7, 1992) and by the Treaty of Amsterdam (signed in Amsterdam on October 2, 1997).

In the event that the Principal Paying Agent is on any EURIBOR Determination Date required but unable to determine EURIBOR for the relevant Interest Accrual Period in accordance with the above, EURIBOR for such Interest Accrual Period shall be the EURIBOR as determined on the previous EURIBOR Determination Date.

This Section 7 shall be without prejudice to the application of any higher interest under applicable mandatory law.

## 7.6 DETERMINATIONS; NOTIFICATIONS

On each EURIBOR Determination Date the Interest Rate and not later than the first day of the Interest Accrual Period immediately following such EURIBOR Determination Date, the Interest Amount and the aggregate of the Interest Amounts for all Notes of each Class in each case for such Interest Accrual Period shall be determined by the Principal Paying Agent and notified, together with the Payment Date immediately following such Interest Accrual Period, by the Principal Paying Agent to the Bank, the Issuer and, in respect of each Class of Notes then listed on the Irish Stock Exchange, the Irish Stock Exchange.

## 8. LOSS ALLOCATION

### 8.1 Order and Conditions

On each Payment Date the aggregate amount of any Realised Losses shall be allocated as follows (the "**Loss Allocation**"):

*first*, to reduce the Outstanding Threshold Amount,

*second*, after the Outstanding Threshold Amount has been reduced to zero, to reduce equally the Note Principal Amounts of the Class G Notes,

*third*, after the Note Principal Amount of each Class G Note has been reduced to EUR 1 per Note, to reduce equally the Note Principal Amounts of the Class F Notes,

*fourth*, after the Note Principal Amount of each Class F Note has been reduced to EUR 1 per Note, to reduce equally the Note Principal Amounts of the Class E Notes,

*fifth*, after the Note Principal Amount of each Class E Note has been reduced to EUR 1 per Note, to reduce equally the Note Principal Amounts of the Class D Notes,

*sixth*, after the Note Principal Amount of each Class D Note has been reduced to EUR 1 per Note, to reduce equally the Note Principal Amounts of the Class C Notes,

*seventh*, after the Note Principal Amount of each Class C Note has been reduced to EUR 1 per Note, to reduce equally the Note Principal Amounts of the Class B Notes,

*eighth*, after the Note Principal Amount of each Class B Note has been reduced to EUR 1 per Note, to reduce equally the Note Principal Amounts of the Class A2+ Notes to EUR 1 per Note, *provided that* only the product of the Realised Losses and the A2+ Reduction Factor shall be allocated to reduce the Class Principal Amount of the Class A2+ Notes on such Payment Date, whereby "**A2+ Reduction Factor**" means 500,000 divided by 23,500,000,

*ninth*, after the Note Principal Amount of each Class A2+ Note has been reduced to EUR 1 per Note, to reduce equally the Note Principal Amounts of the Class A1+ Notes to EUR 1 per Note, *provided that* only the product of the Realised Losses and the A1+ Reduction Factor shall be allocated to reduce the Class Principal Amount of the Class A1+ Notes on such Payment Date, whereby "**A1+ Reduction Factor**" means 500,000 divided by 1,335,500,000;

*provided that* (i) the Bank has duly notified the Trustee pursuant to Section 8.3 (Loss Allocation – Notice to Trustee) and (ii) such Loss Allocation shall be made in accordance with the terms of the Trustee's confirmation pursuant to Clause 10.4(b) of the Trust Agreement. Realised Losses may not be allocated pursuant to the Loss Allocation if and for as long as the Issuer or, failing the Issuer pursuant to Clause 26.4 of the Trust Agreement, the Bank is in breach of its obligation to maintain a trustee pursuant to Section 4 (Trustee) of the Terms and Conditions or any condition for the Loss Allocation which is to be fulfilled by the Bank is not complied with or the Bank or the Issuer is in breach of its obligations under the Trust Agreement and such breach of or non-compliance with the Trust Agreement may affect the exercise of the Trustee's rights and obligations under the Trust Agreement to the detriment of the Transaction Creditors, *provided that* such Realised Losses may be allocated pursuant to the Loss Allocation once such breach has been remedied but only to the extent that such breach has not resulted in or increased any such Realised Loss, and *provided further that*, if it can be established to the satisfaction of the Trustee that any such breach of the Trust Agreement adversely affects one or more Reference Claims only (including a breach of reporting requirements in respect of a portion of Reference Claims), the Loss Allocation in respect of all other Reference Claims shall not be affected by such breach.

Reference Claims in respect of which any of the Eligibility Criteria, Replenishment Conditions, Servicing Standards or, if relevant, requirements for transfer of such Reference Claim pursuant to Provision 8 (Transfers) of the Reference Pool Provisions is not complied with shall not qualify for allocation of Realised Losses pursuant to the Loss Allocation, subject to certain limited exceptions, as set out in Provision 9 (Non-compliance) of the Reference Pool Provisions.

The allocation of Realised Losses to any Note shall not be affected by the invalidity or unenforceability of any other Note ranking equal or junior to such Note for the purposes of the Loss Allocation. If any Note remains outstanding after any other Note, ranking equal or junior to such outstanding Note for the purposes of the Loss Allocation, has, for any reason, been redeemed, other than in accordance with the Terms and Conditions, in full or in part (as opposed to any reduction of the principal amount by the Loss Allocation), each such redeemed Note shall be deemed to remain outstanding for the purposes of the Loss Allocation in respect of such Note.

**"Realised Loss"** means, with respect to a Liquidated Reference Claim, the Outstanding Nominal Amount of such Liquidated Reference Claim, the Accrued Interest on such Liquidated Reference Claim and the related Enforcement Costs, each as of the end of the Collection Period during which it became a Liquidated Reference Claim, in each case, not otherwise recovered from collections (including any net enforcement proceeds) as allocated pursuant to Provision 4 (Allocation of Payments and Enforcement Proceeds) of the Reference Pool Provisions. For the avoidance of doubt, Realised Losses shall include or (where there are no other losses with respect to such Liquidated Reference Claim) consist entirely of any amount of principal foregone after the Cut-off Date or the Replenishment Date, as relevant, as part of payment rescheduling or debt restructuring of such Reference Claim in accordance with the Servicing Standards (but without prejudice to Provision 9 (Non-compliance) of the Reference Pool Provisions).

For the avoidance of doubt, the Realised Loss shall not include any undrawn portion of a Contingent Reference Claim remaining as of the end of the Collection Period during which such Reference Claim became a Liquidated Reference Claim.

**"Outstanding Nominal Amount"** means,

- (a) with respect to a Reference Claim that is not a Contingent Reference Claim, the initial principal amount of such Reference Claim as of the Cut-off Date or the Replenishment Date on which it was added to the Reference Pool, as reduced by the Collections in respect of such Reference Claim, and
- (b) with respect to a Contingent Reference Claim that is (i) not a Defaulted Reference Claim or Liquidated Reference Claim, the sum of the Drawn Amount and the Undrawn Amount of such Reference Claim, and (ii) that is a Defaulted Reference Claim or Liquidated Reference Claim, the Drawn Amount of such Reference Claim,

*provided that*, in each case, any amount of principal foregone as part of payment rescheduling or debt restructuring of such Reference Claim in accordance with the Servicing Standards (but without prejudice to Provision 9 (Non-compliance) of the Reference Pool Provisions) shall be deemed not to reduce the Outstanding Nominal Amount of such Reference Claim and if after any forgiveness of principal the remaining principal amount of such Reference Claim has been satisfied in full, such Reference Claim shall be deemed to exist in an amount equal to the amount of principal foregone in respect of such Reference Claim.

**"Drawn Amount"** means, as of any date with respect to a Contingent Reference Claim, the aggregate outstanding principal amounts of all drawings made until such date, as reduced by the sum of Collections received until such date, *provided that* the Drawn Amount of a Contingent Reference Claim shall not at any time exceed the initial Outstanding Nominal Amount of such Contingent Reference Claim, as specified in the initial Reference Claim List or the related Replenishment Report, if such Contingent Reference Claim was included into the Reference Pool through Replenishment, as applicable.

**"Undrawn Amount"** means, with respect to a Contingent Reference Claim at any time, the amount equal to the excess of (i)(a) the initial Outstanding Nominal Amount of such Contingent Reference Claim as specified in the initial Reference Claim List or the related Replenishment Report, if such Contingent Reference Claim was included into the Reference Pool through Replenishment, as applicable, or (b) if such initial Outstanding Nominal Amount has been reduced by repayments under a Reference Guarantee underlying such Contingent Reference Claim, such reduced Outstanding Nominal Amount, over (ii) the Drawn Amount of such Contingent Reference Claim as of such date.

**"Accrued Interest"** means, with respect to a Reference Claim, unpaid interest at the

Contractual Rate of Interest or any applicable contractual or statutory default interest accrued until (and including) the date on which Realised Losses have been allocated pursuant to the Loss Allocation with respect to such Reference Claim, including, for the avoidance of doubt, any capitalised interest (if any), *provided that* in connection with payment rescheduling or debt restructuring of a Reference Claim in accordance with the Servicing Standards (i) interest on any amount of principal foregone as part thereof shall be deemed to accrue as if such amount had not been forgiven and (ii) any amount of interest foregone as part thereof shall be included in the Accrued Interest with respect to such Reference Claim.

**"Contractual Rate of Interest"** means the rate of interest applicable to a Reference Claim under the relevant Reference Loan agreement.

**"Enforcement Costs"** means in relation to a Reference Claim all reasonable fees, disbursements, costs and expenses (excluding internal costs and expenses of the Bank and the Servicer) payable or incurred in connection with the enforcement of such Reference Claim, including foreclosure on the related Reference Collateral.

**"Collections"** means, with respect to a Reference Claim, all payments (including prepayments and enforcement proceeds) allocable to the principal amount of such Reference Claim, including for the avoidance of doubt any relevant payments received under any loss sharing arrangement and/or any guarantee in respect of such Reference Claim, pursuant to Provision 4 (Allocation of Payments and Enforcement Proceeds) of the Reference Pool Provisions, and any other reductions of the principal amount, including by way of set-off, of such Reference Claim, *provided that* each direct debit (the **"Direct Debit"**) (*Lastschriftinzugsverfahren*) shall constitute a Collection at the time it is made, *provided that* if such Direct Debit is claimed back (*Lastschriftrückbelastung*) thereafter, (i) it shall cease to constitute a Collection and the Outstanding Nominal Amount of the relevant Reference Claim shall be reincreased by the amount claimed back (the **"Direct Debit Increase"** and the amount so claimed back, the **"Direct Debit Increase Amount"**) or (ii) if the Direct Debit Increase occurs in a Collection Period other than the Collection Period in which the Direct Debit occurred, such Direct Debit Increase Amount shall be deducted from the aggregate Collections obtained since the beginning of the Collection Period in which the relevant Direct Debit Increase occurred. If as a result of a Direct Debit Increase the Aggregate Principal Balance would exceed the Replenishment Cap, the Reference Claims added to the Reference Pool pursuant to Provision 6 (Replenishment) of the Reference Pool Provisions after such Direct Debit has been made shall be removed (in whole or in part) in the reverse chronological order from the Reference Pool, *provided that* if only some but not all of the Reference Claims added to the Reference Pool at the same time need to be so removed, the Bank may, at its sole discretion, choose among such Reference Claims the Reference Claims (or portion thereof) to be removed, and *provided further that* all Replenishment Conditions as of the Replenishment Date on which such removed Reference Claim or Reference Claims were added to the Reference Pool shall be met.

**"Collection Period"** means with respect to the first Payment Date, the period from the Cut-off Date until the last calendar day of the second calendar month preceding the month in which the first Payment Date occurs (both days inclusive) and with respect to any subsequent Payment Date, the period from the calendar day immediately following the last day of the previous Collection Period until the last calendar day of the second calendar month preceding the month in which the relevant Payment Date occurs (both days inclusive) and **"Related Collection Period"** means, in connection with a Payment Date or a Determination Date, the Collection Period immediately preceding such Payment Date or Determination Date.

**"Outstanding Threshold Amount"** means, in respect of any date, EUR 23,000,000 (i) as reduced on or before such date by any Realised Losses allocated to the Outstanding Threshold Amount pursuant to this Section 8.1 and (ii) as increased on or before such date as a result of the Unjustified Loss Allocation procedure.

**"Determination Date"** means the 14<sup>th</sup> Business Day following the end of the Related Collection Period and **"Relevant Determination Date"** means the Determination Date immediately following a given Collection Period.

**"Liquidated Reference Claim"** means a Reference Claim:

- (i) in respect of which a Credit Event had occurred and was not remedied before a Credit Event Notice has been given pursuant to (ii) below,
- (ii) in respect of which a Credit Event Notice has been given regarding such Credit Event, and
- (iii) in respect of which the Bank has notified the Trustee as set out in Section 8.3 (Loss Allocation – Notice to Trustee).

**"Defaulted Reference Claim"** means a Reference Claim, other than a Liquidated Reference Claim:

- (i) in respect of which a Credit Event had occurred and was not remedied before a Credit Event Notice has been given pursuant to (ii) below, and
- (ii) in respect of which a Credit Event Notice has been given regarding such Credit Event.

**"Credit Event"** means with respect to a Reference Claim the occurrence, after the Issue Date, of (i) Bankruptcy or (ii) Failure to Pay. Without prejudice to the Eligibility Criteria and Replenishment Conditions, the occurrence of Bankruptcy or Failure to Pay will constitute a Credit Event whether or not such occurrence arises directly or indirectly from (a) any lack or alleged lack of authority or capacity of a Debtor to enter into any Reference Loan, Reference Facility or Reference Guarantee, as applicable, underlying a Reference Claim and (b) any actual or alleged unenforceability, illegality, impossibility or invalidity with respect to any Reference Claim, however described. For the avoidance of doubt, in the case of a Contingent Reference Claim, Bankruptcy constitutes a Credit Event only if the relevant Drawn Amount is an amount greater than zero. For the further avoidance of doubt, with regard to any Reference Guarantee, such Bankruptcy shall constitute a Credit Event regardless of whether such Drawn Amount is made prior to or following such Bankruptcy.

**"Bankruptcy"** means the Debtor: (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (d) institutes or has instituted against it proceedings seeking a judgement of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceedings or petition (i) results in a judgement of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (ii) is not dismissed, discharged, stayed or restrained, in each case, within 30 calendar days of the institution or presentation thereof; (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed,

discharged, stayed or restrained, in each case, within 30 calendar days thereafter; (h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified under clauses (a) to (g) (inclusive); or (i) takes any formal action in indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**"Failure to Pay"** means, with respect to a Reference Claim, that a due payment in an aggregate amount of not less than EUR 10,000, or, if lower, not less than 50% of the outstanding principal amount of such Reference Claim, has not been made when due within 90 calendar days from the relevant due date (after giving effect to any grace period applicable on the Issue Date or the Replenishment Date on which such Reference Claim was added to the Reference Pool, as relevant, but irrespective of any extension thereof after the Issue Date or the relevant Replenishment Date, as the case may be), *provided that* a payment of any amount shall be deemed to have been made if the related payment obligation of the Debtor pursuant to the underlying Reference Loan, Reference Facility or Reference Guarantee has been fully satisfied in such amount, *provided further that* any failure to pay a guarantee fee pursuant to the underlying Reference Guarantee shall not constitute a Failure to Pay.

**"Credit Event Notice"** means an irrevocable notice by the Bank to the Trustee, in a form agreed between the Bank and the Trustee, that a Credit Event has occurred and was not remedied. A Credit Event Notice must be given by the Bank as soon as practicable, but not later than 120 calendar days, after the Bank or the Servicer (if different) has become aware of the occurrence of the Credit Event, and, where relevant, must contain a description in reasonable detail of the facts relevant to the determination that a Credit Event has occurred and specify the date when the Credit Event occurred and the Reference Claim in respect of which the Credit Event occurred. A Credit Event Notice may be delivered between 9:00 a.m. and 4:00 p.m. (London time) on any Business Day by mail, facsimile or e-mail in accordance with the Trust Agreement. If a Credit Event Notice is delivered to the Trustee after 4:00 p.m. (London time) on a Business Day or on a day which is not a Business Day, such Credit Event Notice shall be deemed delivered on the immediately following Business Day.

**"Aggregate Principal Balance"** means the aggregate Outstanding Nominal Amount of all Reference Claims including (A) the Outstanding Nominal Amount of any Reference Claim which is either a Defaulted Reference Claim or a Liquidated Reference Claim and (B) the Outstanding Nominal Amount of Reference Claims added to the Reference Pool pursuant to Provision 6 (Replenishment) of the Reference Pool Provisions, but, for the avoidance of doubt, excluding the Outstanding Nominal Amounts of any Reference Claims removed from the Reference Pool pursuant to Provision 8 (Transfers), Provision 9 (Non-compliance) or Provision 6.2 (Substitution) of the Reference Pool Provisions.

## **8.2 Determinations**

Any Realised Losses in respect of a Collection Period and their allocation on the related Payment Date shall be determined in accordance with these Terms and Conditions by the Bank.

The Trustee is obliged under the Trust Agreement duly to protect the interests of the Transaction Creditors subject to and in accordance with Clause 2.1. of the Trust Agreement.

## **8.3 Notice to Trustee**

It is a condition for the Loss Allocation under the Trust Agreement that the Bank gives notice to the Trustee in writing including (i) a statement to the effect that all amounts expected to be recovered in respect of any Defaulted Reference Claim and allocable to its principal amount, the Accrued Interest and the Enforcement Costs in respect thereof, have been received by the Bank, (ii) the time when the last such amount was received and (iii) the amount of the Realised Losses with respect to such Defaulted Reference Claim.



## 9. UNJUSTIFIED LOSS ALLOCATION

### 9.1 Reversal of Realised Loss

On the Payment Date following the determination of an Unjustified Loss Allocation:

- (i) the amount of such Unjustified Loss Allocation shall be allocated to reverse previous Loss Allocations in an order which is the reverse of the order of the Loss Allocation set forth in Section 8.1 (Loss Allocation – Order and Conditions). Accordingly, the amount of such Unjustified Loss Allocation shall be allocated, in such reverse order, to increase equally each Note Principal Amount of the relevant Class or Classes of Notes, *provided that*, in the case of the Class A2+ Notes, only the product of the A2+ Reduction Factor and the amount of such Unjustified Loss Allocation allocable to the Class A2+ Notes shall be allocated to the Class A2+ Notes, and *provided that*, in the case of the Class A1+ Notes, only the product of the A1+ Reduction Factor and the amount of such Unjustified Loss Allocation allocable to the Class A1+ Notes shall be allocated to the Class A1+ Notes; and
- (ii) the Issuer shall, in respect of each Payment Date since the Payment Date on which the Unjustified Loss Allocation was made, pay the amount of interest which would have been payable on any Class of Notes on such Payment Date if such Unjustified Loss Allocation had not occurred, increased in each case by default interest at a rate of 2% per annum on the amount by which the Note Principal Amounts of each relevant Class of Notes are increased in accordance with Section 9.1(i) above as a result of such Unjustified Loss Allocation.

For the avoidance of doubt,

- (a) the Noteholders shall have no rights with respect to an Unjustified Loss Allocation after the final redemption of their Notes; and
- (b) the Class Principal Amount of any Class of Notes may not exceed the initial Class Principal Amount of such Class of Notes minus any amount redeemed with respect to such Class of Notes pursuant to Section 10.1 (Redemption – Amortisation of the Notes), Section 10.2 (Redemption – Scheduled Maturity and Legal Maturity), Section 11.2 (Early Redemption for Default – Method and Amount), Section 12.2 (Early Redemption by the Issuer – Deferred Redemption) and/or Section 12.3 (Early Redemption by the Issuer – Redemption in the case of Issuer Event of Default or Bank Event of Default).

**"Unjustified Loss Allocation"** means any Loss Allocation or any part thereof which was not made in compliance with Section 8 (Loss Allocation).

### 9.2 Collections

For the avoidance of doubt, any payment or other reduction of the principal amount (in accordance with Provision 4 (Allocation of Payments and Enforcement Proceeds) of the Reference Pool Provisions) of a Reference Claim for which an Unjustified Loss Allocation has been determined shall constitute a Collection on such Reference Claim.

### 9.3 Determinations

Without prejudice to Section 9.1 above, Unjustified Loss Allocation with respect to a given Collection Period, if any, shall be determined and the re-instatement of the Note Principal

Amount of any Note and/or the Outstanding Threshold Amount shall be calculated by the Bank in accordance with the Trust Agreement not later than on the Relevant Determination Date.

## 10. REDEMPTION

### 10.1 Amortisation of the Notes

- (a) On each Payment Date on or prior to the end of the Replenishment Period, the Notes may be redeemed up to an amount or in an amount equal to the Excess Amount as follows:
- (i) the Class A1+ Notes shall be redeemed up to an amount or in an amount equal to the product of the Excess Amount and the A1+ Reduction Factor;
  - (ii) after the Class A1+ Notes have been redeemed in full, the Class A2+ Notes shall be redeemed up to an amount or in an amount equal to the product of the Excess Amount and the A2+ Reduction Factor;
  - (ii) after the Class A2+ Notes have been redeemed in full, the Class B, the Class C, the Class D, the Class E Notes, the Class F Notes and then the Class G Notes, in this order sequentially, shall be redeemed up to an amount or in an amount in aggregate equal to the Excess Amount,

*provided that* the redemption amount allocated to each Class of Notes (including for the purposes of the definition of "Excess Amount") will be, in each case, calculated (a) after the reduction of the Class Principal Amount(s) and/or the Outstanding Threshold Amount by allocation of Realised Losses, if any, and (b) the increase of the Class Principal Amount(s) and/or the Outstanding Threshold Amount as a result of the Unjustified Loss Allocation procedure, if any, in each case, on the relevant Payment Date pursuant to Section 8 (Loss Allocation) and Section 9 (Unjustified Loss Allocation), respectively.

"**Excess Amount**" means, in respect of each Payment Date, the excess, if any, of (A) the Outstanding Threshold Amount together with the aggregate of the Class Principal Amounts of all Classes of Notes (multiplied, in the case of the Class A1+ Notes, by the A1+ Increase Factor and/or multiplied, in the case of the A2+ Notes, by the A2+ Increase Factor) as of the calendar day immediately preceding such Payment Date, as reduced by allocation of Realised Losses pursuant to Section 8 (Loss Allocation), if any, and increased as a result of allocation of Unjustified Loss Allocation pursuant to Section 9 (Unjustified Loss Allocation), if any, in each case, on such Payment Date (divided, in the case of Class A1+ Notes, by the A1+ Reduction Factor and/or divided, in the case of Class A2+ Notes, by the A2+ Reduction Factor), over (B) the aggregate Outstanding Nominal Amounts of all Reference Claims other than Liquidated Reference Claims in respect of which Realised Losses have been allocated prior or will be allocated on such Payment Date pursuant to Loss Allocation (and, for the avoidance of doubt, excluding any Reference Claims removed from the Reference Pool prior to or on such Payment Date pursuant to Provision 8 (Transfers), Provision 9 (Non-compliance) and/or Provision 6.2 (Substitution) of the Reference Pool Provisions, but including any Reference Claims added to the Reference Pool prior to such Payment Date pursuant to Provision 6 (Replenishment) of the Reference Pool Provisions) as of the end of the Collection Period immediately preceding such Payment Date, *provided that* if the Excess Amount (multiplied, in the case of (i) above, by the A1+ Reduction Factor and/or multiplied, in the case of (ii) above, by the A2+ Reduction Factor) exceeds the Class Principal Amount of the relevant Class of Notes (such excess amount, the "**Class Excess**"), (x) such Class shall be redeemed only in the amount of such Class Principal Amount and (y) the Class Excess (divided, if such Class Excess results from the

application of (i) above, by the A1+ Reduction Factor and/or divided, if such Class Excess results from the application of (ii) above, by the A2+ Reduction Factor) shall constitute the "Excess Amount" for the purposes of calculating the redemption amount for the Class of Notes next to be redeemed pursuant to the order set out in (i) and (ii) above.

- (b) Each Note of a particular Class shall be redeemed on each Payment Date in an amount equal to the redemption amount allocated to such Class in accordance with paragraph (a) above divided by the number of Notes in such Class.

## 10.2 Scheduled Maturity and Legal Maturity

The Notes shall be redeemed on the Payment Date falling in July 2022 (the "**Scheduled Maturity Date**") at their Note Principal Amount as of the Scheduled Maturity Date. If any Reference Claims (other than Liquidated Reference Claims or Non-qualifying Reference Claims) are overdue and outstanding or in respect of which Bankruptcy has occurred are outstanding (each an "**Overdue Reference Claim**", which term shall include for the avoidance of doubt, any Defaulted Reference Claim) as of the end of the Collection Period immediately preceding the Scheduled Maturity Date, and the aggregate of the Outstanding Nominal Amounts of such Overdue Reference Claims exceeds the Outstanding Threshold Amount as of the Scheduled Maturity Date, then the redemption of the Notes shall be subject to the following:

- (a) the redemption of those Notes, to which the Outstanding Nominal Amount of each Overdue Reference Claim as of the end of the Collection Period immediately preceding the Scheduled Maturity Date would be allocated pursuant to the Loss Allocation if such amounts were Realised Losses, shall be deferred so that the aggregate of the Note Principal Amounts of such Notes (multiplied, in the case of Class A1+ Notes, by the A1+ Increase Factor and/or multiplied, in the case of the Class A2+ Notes, by the A2+ Increase Factor) immediately after the Scheduled Maturity Date is in an amount equal to the aggregate of the Outstanding Nominal Amounts of such Overdue Reference Claims as of the end of the Collection Period immediately preceding the Scheduled Maturity Date minus the Outstanding Threshold Amount as of the Scheduled Maturity Date; and
- (b) the Issuer shall procure that Appraised Losses in respect of all Overdue Reference Claims as of the end of the Collection Period immediately preceding the Scheduled Maturity Date in relation to which a Credit Event has occurred as of the end of the Collection Period immediately preceding the Legal Maturity Date are determined within 120 calendar days of the Scheduled Maturity Date. Each such Appraised Loss shall constitute a Realised Loss to be allocated pursuant to the Loss Allocation. On the Legal Maturity Date: (A) each such Realised Loss shall be allocated pursuant to the Loss Allocation, and (B) the Issuer shall redeem the remaining outstanding Notes at the then outstanding Note Principal Amounts following such Loss Allocation and (C) the Issuer shall pay accrued interest on each Note in respect of the Note Principal Amount outstanding as of the Scheduled Maturity Date for the period commencing on (and including) the Scheduled Maturity Date and ending on (but excluding) the Legal Maturity Date,

*provided that* the Legal Maturity Date shall be the only Payment Date that shall occur as from the Scheduled Maturity Date.

"**A1+ Increase Factor**" means 1 divided by the A1+ Reduction Factor.

"**A2+ Increase Factor**" means 1 divided by the A2+ Reduction Factor.

"**Appraised Loss**" means, with respect to any Reference Claim, the excess of (A) the Outstanding Nominal Amount, the Accrued Interest and the Enforcement Costs in respect of such Reference Claim at any time over (B) its Appraised Value at such time.

"**Appraised Value**" means, with respect to a Reference Claim, the aggregate amount of the expected future recoveries allocable to such Reference Claim (including, for the avoidance of doubt, to the Accrued Interest and the Enforcement Costs) in accordance with the Reference Pool Provisions and the Servicing Standards, determined by an independent expert appointed for this purpose by the Trustee in accordance with the Trust Agreement.

"**Legal Maturity Date**" means November 29, 2022.

## 11. EARLY REDEMPTION FOR DEFAULT

### 11.1 Default Events

Each Noteholder may declare due the Notes held by it by delivery of a written notice to the Issuer with a copy to the Trustee if a Default Event with respect to any Note held by it occurred, *provided that* the right to declare the Notes due in respect of any Default Event shall cease to exist if such Default Event has been cured before the right is exercised;

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

- (i) the Issuer fails to make any payment due to be made under the Notes within 30 Business Days from the relevant due date,
- (ii) the Issuer or its assets become subject to bankruptcy, examinership, insolvency, moratorium or similar proceedings, which affect or prejudice the performance of obligations under the Notes, or there is a refusal to institute such proceedings for lack of assets, or
- (iii) the expiration of the 30<sup>th</sup> Business Day (the "**Trustee Resignation Effective Date**") following the delivery of a notice (the "**Trustee Resignation Notice**") by the Trustee to the Noteholders pursuant to Section 15 (Form of Notices) that it will resign as Trustee pursuant to the Trust Agreement for good cause (*aus wichtigem Grund*) unless a notice to the Noteholders pursuant to Section 15 (Form of Notices) has been given on or before the 28<sup>th</sup> Business Day following the delivery of the Trustee Resignation Notice that the cause for such resignation has been remedied to the Trustee's satisfaction or a successor trustee has been appointed in accordance with the Trust Agreement.

### 11.2 Method and Amount

In the event that any Noteholder exercises its right pursuant to Section 11.1 (Early Redemption for Default – Default Events) the Issuer shall (i) redeem all of the Notes (but not some only) within 10 Business Days following the Termination Date in the amount equal to the Note Principal Amounts as of the Termination Date as reduced by Realised Losses to be determined and allocated pursuant to the Loss Allocation as of the Termination Date and as increased as a result of the Unjustified Loss Allocation procedure as if such date were a Payment Date (with the Related Collection Period ending on the Termination Date) and (ii) pay accrued interest on each Note, (x) for the period commencing on (and including) the Payment Date immediately preceding the Termination Date and ending on (but excluding) the Termination Date in respect of the Note Principal Amount outstanding as of such Payment Date and (y) for the period commencing on (and including) the Termination Date and ending on (but excluding) the date on which all, or in the case of (a) below some, of the Notes are redeemed pursuant to (i) above

(such date, the "**Termination Redemption Date**"), in respect of the Note Principal Amount outstanding as of the Termination Date (as reduced by Realised Losses allocated pursuant to (i) above and increased as a result of the Unjustified Loss Allocation procedure); *provided that*, if the aggregate of the Outstanding Nominal Amounts of all Defaulted Reference Claims as of the Termination Date exceeds the Outstanding Threshold Amount as of the Termination Date, then the obligation of the Issuer to redeem the Notes shall, if the Issuer so elects, be subject to the following:

- (a) the redemption of those Notes, to which the Outstanding Nominal Amounts of such Defaulted Reference Claims as of the Termination Date would be allocated pursuant to the Loss Allocation if such amounts were Realised Losses, shall be deferred so that the aggregate of the Note Principal Amounts of such Notes (multiplied, in the case of the Class A1+ Notes, by the A1+ Increase Factor and/or multiplied, in the case of the A2+ Notes, by the A2+ Increase Factor) immediately after the Termination Date is in an amount equal to the aggregate of the Outstanding Nominal Amounts of such Defaulted Reference Claims as of the Termination Date minus the Outstanding Threshold Amount as of the Termination Date; and
- (b) the Issuer shall procure that Appraised Losses in respect of all Defaulted Reference Claims as of the Termination Date are determined within 120 calendar days of the Termination Date. Each such Appraised Loss shall constitute a Realised Loss to be allocated pursuant to the Loss Allocation. Not later than on the fifth Business Day following the expiry of such 120 calendar day period: (A) each such Realised Loss shall be allocated pursuant to the Loss Allocation, and (B) the Issuer shall redeem the remaining outstanding Notes at the then outstanding Note Principal Amounts following such Loss Allocation and (C) the Issuer shall pay accrued interest on each Note in respect of the Note Principal Amount outstanding as of the Termination Redemption Date for the period commencing on (and including) the Termination Redemption Date and ending on (but excluding) the date of redemption pursuant to (B) above,

*provided that*, for the purpose of this Section 11.2, such date of redemption pursuant to (b)(B) above shall be the only Payment Date that shall occur as from the Termination Date.

"**Termination Date**" means the date on which the first early redemption notice from a Noteholder pursuant to Section 11.1 (Early Redemption for Default – Default Events) is received by the Issuer.

## **12. EARLY REDEMPTION BY THE ISSUER**

### **12.1 Issuer Guarantee Termination**

- (i) In the case of an Issuer Guarantee Termination pursuant to clause (A) of the definition of "Issuer Guarantee Termination", and subject to Section 12.2 below, on the Payment Date on which an Issuer Guarantee Termination occurs, or
- (ii) in the case of an Issuer Guarantee Termination pursuant to clause (B) of the definition of "Issuer Guarantee Termination", and subject to Section 12.3 below, within 10 Business Days following the date as of which an Issuer Guarantee Termination occurs,

the Issuer shall redeem the Notes, in each case, at the then current Note Principal Amount as of such Payment Date or such date (the "**Early Redemption Date**") in accordance with this Section 12 (the "**Early Redemption**").

**"Issuer Guarantee Termination"** occurs:

- (A) on the Payment Date as of which the Issuer Guarantee is terminated by the Bank at its option (i) following the occurrence of a Regulatory Event, or (ii) following the reduction of the Aggregate Principal Balance to 10% or less of the Replenishment Cap, or (iii) falling in or after July 2012; or
- (B) on the date the Issuer Guarantee is terminated because of the occurrence of an Issuer Event of Default or a Bank Event of Default.

**"Regulatory Event"** means any enactment or establishment of or supplement or amendment to, or change in, (A) the laws of the Federal Republic of Germany or Ireland, or an official communication of previously not existing or not publicly available official interpretation of such laws or a change in the official interpretation, implementation or application of such laws, or (B) any accord, standard or recommendation of the Basel Committee on Banking Supervision or an official communication of previously not existing or not publicly available official interpretation of any such accord, standard or recommendation, or a change in the official interpretation, implementation or application of any such accord, standard or recommendation, or (C) any change in the application of any of the laws, communications, interpretations, implementations, applications, accords, standards or recommendations set out in (A) or (B) by the Bank, including, without limitation the application of the internal ratings-based approach under the laws of the Federal Republic Germany, in each case, that becomes effective or applicable for the Bank on or after the Issue Date, as a result of which, in the determination of the Bank, subject to the professional judgement of the Trustee, and in the cases of (A) and (B) for reasons outside their control, and after taking reasonable measures (such measures not involving any material additional payment by, or capital or other expenses for, the Bank or the Issuer), (i) the Bank would be materially restricted from complying with the conditions for the Loss Allocation and/or the Bank and/or the Issuer would be materially restricted from performing any of their obligations under any of the Notes, the Issuer Guarantee, the A1 Senior Guarantee, if any, the A2 Senior Guarantee, if any, and/or the Trust Agreement, (ii) either by a voluntary submission or by applicable law, the Bank would be subject to less favourable capital adequacy treatment with respect to the Transaction, the Reference Claims (taking into account any capital relief from the Notes, the Issuer Guarantee, the A1 Senior Guarantee, if any, or the A2 Senior Guarantee, if any) and/or either by a voluntary submission or by applicable law, the amount of regulatory capital freed up in respect of any Reference Claim would be different, including as a result of a reduction of the risk weighting factor for such Reference Claim, and/or the costs of obtaining capital relief from the Notes, the Issuer Guarantee, the A1 Senior Guarantee, if any, or the A2 Senior Guarantee, if any, are increased, in each case by comparison to the situation that existed on the Issue Date immediately after the issue of the Notes or (iii) the Bank and/or the Issuer would be required to pay any additional amounts on account of taxes resulting from a change in the Issuer's status for Irish tax purposes and/or to make any tax withholding or deduction in respect of any payments on the Notes, the Note Collateral, the Issuer Guarantee, the A1 Senior Guarantee, if any, the A2 Senior Guarantee, if any, or any other agreement relating to the Transaction. For the avoidance of doubt, the occurrence of a Regulatory Event shall not be excluded by the fact that, prior to the Issue Date (a) the event constituting such Regulatory Event was announced or contained in any proposal for a change in the official interpretation, implementation or application of the laws of the Federal Republic of Germany or Ireland or any accord, standard or recommendation of the Basel Committee on Banking Supervision (including any document or other communication in draft form) or expressed in any statement by any official of the competent authority in expert meetings or other discussions in connection with such change or (b) the competent authority has taken any decision or expressed any view with respect to any individual transaction other than the Transaction. Accordingly, such proposals, statements, decisions or views shall not be taken into account when assessing the capital adequacy treatment to which the Bank is subject on the Issue Date immediately after the issue of the Notes.

**"Issuer Event of Default"** means that the Issuer Guarantee Bankruptcy occurs in respect of the Issuer.

**"Bank Event of Default"** means (i) the Bank defaults in the payment of any amount due under the Issuer Guarantee and such default continues for 3 Business Days following delivery by the Issuer to the Bank of a notice under the Issuer Guarantee requiring the same to be remedied, (ii) Issuer Guarantee Bankruptcy occurs in respect of the Bank, or (iii) the Issuer Guarantee is terminated by operation of law or under mandatory provisions of law.

**"Issuer Guarantee Bankruptcy"** means that a party to the Issuer Guarantee: (1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgement of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgement of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, examiner, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; or (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive).

## 12.2 Deferred Redemption

In the event that the termination of the Issuer Guarantee occurs as a result of the occurrence of an Issuer Guarantee Termination pursuant to clause (A) of the definition of "Issuer Guarantee Termination", the Issuer shall redeem the Notes in accordance with the provisions of Section 10.2 (Redemption – Scheduled Maturity and Legal Maturity), except that, for the purpose of this Section 12.2, (a) references to the "Scheduled Maturity Date" shall be deemed to be references to the "Early Redemption Date", and (b) references to the "Legal Maturity Date" shall be deemed to be references to the "Final Redemption Date".

**"Final Redemption Date"** means the 120<sup>th</sup> calendar day following the Early Redemption Date.

## 12.3 Redemption in the case of Issuer Event of Default or Bank Event of Default

In the event that the termination of the Issuer Guarantee occurs as a result of (i) the occurrence of an Issuer Event of Default pursuant to clause (B) of the definition of "Issuer Guarantee Termination" or (ii) a Bank Event of Default, the Issuer shall redeem all of the Notes (but not some only) in accordance with the provisions of Section 11.2 (Early Redemption for Default – Method and Amount), except that, for the purpose of this Section 12.3, the redemption pursuant to Section 11.2 (subject to any deferral pursuant to Section 11.2(b)) shall be made on the Early Redemption Date and references to the Termination Date shall be deemed to be references to the Early Redemption Date.

## 12.4 Reference Pool

For the avoidance of doubt, the redemption pursuant to Section 12 (Early Redemption by the Issuer) shall not result in the exclusion of any Reference Claim from the Reference Pool.

## 12.5 Redemption Amount per Note

If only a portion of the Class Principal Amount of any Class is redeemed on the Early Redemption Date, each Note of such Class will be redeemed in an amount equal to such portion divided by the number of Notes of such Class, *provided that* the result shall, for each Note, be rounded to the nearest EUR 0.01 (with EUR 0.005 being rounded upwards).

## 13. TAXES

Payments in respect of the Notes shall only be made after deduction and withholding of current or future taxes, levies or governmental charges, regardless of their nature, which are imposed, levied or collected (collectively, "**taxes**") under any applicable system of law or in any country which claims fiscal jurisdiction by, or for the account of, any political subdivision thereof or government agency therein authorised to levy taxes, to the extent that such deduction or withholding is required by law. The Issuer shall account for the deducted or withheld taxes with the competent government agencies.

The Issuer is not obliged to pay any amounts as compensation for deduction or withholding of taxes in respect of payments on the Notes.

If on any Payment Date any withholding or deduction on account of taxes is imposed with respect to payments under the Note Collateral and/or the Issuer Guarantee, the amount payable by the Issuer under any Note of a particular Class on such Payment Date shall be reduced by the amount of such withholding or deduction made with respect to the Note Collateral and/or the Issuer Guarantee, divided between each Class of Notes *pari passu* and on a *pro rata* basis, and divided by the number of Notes of such Class of Notes.

## 14. INVESTOR NOTIFICATIONS

### 14.1 Regular

With respect to each Payment Date, the Issuer, or the Principal Paying Agent on its behalf, shall, not later than the Business Day preceding the Payment Date, (i) notify the holders of Notes of each Class in accordance with Section 15 (Form of Notices) of, (ii) notify each of the Rating Agencies of and (iii) as long as any Class is listed on the regulated market of the Irish Stock Exchange, notify the Irish Stock Exchange of the following information prepared by the Bank and verified by the Trustee pursuant to the Trust Agreement (each a "**Regular Notification**"):

- (a) the Note Principal Amount of each Note of such Class on which interest shall be paid on such Payment Date;
- (b) the applicable Interest Accrual Period, the Interest Rate and the Interest Amount to be paid on each Note of such Class on such Payment Date;
- (c) the amount of principal to be paid on each Note of such Class on such Payment Date;
- (d) the aggregate Outstanding Nominal Amount of the Reference Claims or portions thereof, as relevant, (i) added to the Reference Pool pursuant to Replenishment and (ii) removed



from the Reference Pool pursuant to Provision 8 (Transfers), Provision 9 (Non-compliance) and Provision 6.2 (Substitution) of the Reference Pool Provisions, in each case, during the Related Collection Period;

- (e) allocation of Realised Losses, if any, to the Notes of each Class and the Note Principal Amounts outstanding after such allocation on such Payment Date;
- (f) allocation of Realised Losses to the Outstanding Threshold Amount and the Outstanding Threshold Amount outstanding after such allocation on such Payment Date;
- (g) re-instatement, if any, of the Note Principal Amounts of such Class on account of previous Unjustified Loss Allocations and any allocation thereof to the Outstanding Threshold Amount and/or the Notes pursuant to Section 9 (Unjustified Loss Allocation), and any Collections in respect of the Reference Claims for which Unjustified Loss Allocation has been determined;
- (h) determination of Appraised Losses, if applicable;
- (i) in the event of final payment on such Class, the fact that such is the final payment;
- (j) the aggregate of the Outstanding Nominal Amounts and the aggregate amount of the overdue payments in respect of all Reference Claims in the Reference Pool in relation to which a Credit Event has occurred as of the end of the Related Collection Period, if any, and during the Related Collection Period, if any;
- (k) the number of Reference Claims as of the beginning and as of the end of the Related Collection Period and the Aggregate Principal Balance as of the beginning and as of the end of the Related Collection Period;
- (l) whether debt restructuring and/or payment rescheduling has been commenced and/or concluded during the Related Collection Period with respect to any Reference Claim in relation to which a Credit Event has occurred, and the amount of principal, if any, that has been foregone due to such payment rescheduling or debt restructuring; and
- (m) the aggregate of the Collections in respect of all Reference Claims in the Reference Pool in relation to which a Credit Event has occurred as of the end of the Related Collection Period, if any, and during the Related Collection Period, if any.

**"Rating Agencies"** means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. ("**S&P**") and Moody's Investors Service Limited ("**Moody's**").

## **14.2 Early Redemption**

In connection with the early redemption pursuant to Section 11 (Early Redemption for Default) or the Early Redemption pursuant to Section 12 (Early Redemption by the Issuer), the Issuer, or the Principal Paying Agent on its behalf, shall, not later than the Business Day prior to the date of the redemption or the Early Redemption Date, as applicable, notify (i) the holders of Notes of each Class in accordance with Section 15 (Form of Notices), (ii) each of the Rating Agencies and (iii) *provided that* any Notes are then listed on the regulated market of the Irish Stock Exchange, the Irish Stock Exchange, of the following information prepared by the Bank and verified by the Trustee pursuant to the Trust Agreement (the "**Early Redemption Notification**"):

- (a) the Termination Date and the date of the redemption or the Early Redemption Date, as applicable; and

- (b) other matters specified in Section 14.1 (Investor Notifications – Regular) to the extent applicable to such Class.

## 15. FORM OF NOTICES

All notices to the Noteholders shall be either

- (A) delivered to Euroclear and Clearstream, Luxembourg for communication by it to the Noteholders or
- (B) made available for a period of not less than 30 calendar days on a web site, the address of which has been notified to the Noteholders pursuant to (A) on or before the date on which the relevant notice is given in accordance with (B).

Any notice referred to under (A) above shall be deemed to have been given to all Noteholders on the seventh calendar day after the day on which the said notice was delivered to Euroclear and Clearstream, Luxembourg. Any notice referred to under (B) above shall be deemed to have been given to all Noteholders on the day on which it is made available on the web site, *provided that* if so made available after 4:00 p.m. (London time) it shall be deemed to have been given on the immediately following calendar day.

For as long as any Notes are listed on the regulated market of the Irish Stock Exchange and to the extent the rules of that stock exchange so require, notices shall be forwarded to the Companies Announcement Office of the Irish Stock Exchange no later than the date of despatch of such notice to the Noteholders.

## 16. AGENTS

### 16.1 Appointment of Agents

The Issuer has appointed Citibank, N.A., London Branch, 21<sup>st</sup> Floor, Citigroup Centre, Canada Square, Canary Wharf, London E14 5LB, United Kingdom as the principal paying agent and interest determination bank (in such capacity, the "**Principal Paying Agent**" which term shall also include any successor Principal Paying Agent appointed pursuant to Section 16.2 (Agents – Replacement)). The Issuer has appointed A&L Listing Limited, 25-28 North Wall Quay, IFSC, Dublin 1, Ireland as the initial Irish listing agent (the "**Irish Listing Agent**" which term shall include any substitute Irish Listing Agent appointed in accordance with the Transaction Documents). The Irish Listing Agent and the Principal Paying Agent are together referred to as the "**Agents**".

The Principal Paying Agent (including any successor Principal Paying Agent) shall act solely as agents for the Issuer and shall not have any agency or trustee relationship with the Noteholders.

### 16.2 Replacement

The Issuer shall procure that for as long as any Notes are outstanding there shall always be a Principal Paying Agent to perform the functions assigned to it in the Transaction Documents.

The Issuer may with the prior written consent of the Bank, by giving not less than 30 calendar days' notice to the Noteholders and the Principal Paying Agent, replace the Principal Paying Agent with regard to some or all of its functions by one or more other banks or other financial institutions which assume such functions.

In the event that the short term rating of the Principal Paying Agent is withdrawn or falls below A-2 by S&P and/or P-1 by Moody's, and the long term rating of the Principal Paying Agent is withdrawn or falls below A1 by Moody's, the Issuer or, if the Issuer fails to do so, the Trustee on behalf of the Issuer, shall within 30 calendar days upon becoming aware thereof terminate the appointment of the Principal Paying Agent by giving not less than 5 calendar days' prior notice to the Principal Paying Agent and appoint another bank or financial institution as Principal Paying Agent *provided that* such successor Principal Paying Agent or any of its affiliates shall be rated at least A-2 by S&P and/or P-1/A1 by Moody's.

### **16.3 Determinations Binding**

All Interest Rates, Interest Amounts determined and other calculations and determinations made by the Principal Paying Agent for the purposes of the Transaction Documents shall, in the absence of manifest error, be final and binding.

## **17. SUBSTITUTION OF THE ISSUER**

### **17.1 General**

The Issuer may, without the further consent of the Noteholders, at any time upon written request of the Bank substitute in its place another entity (the "**New Issuer**") as debtor in respect of all obligations arising under or in connection with the Notes and the Transaction Documents *provided that*:

- (i) the New Issuer assumes all rights and duties of the Issuer in respect of the Notes and under the Transaction Documents and the Collateral is, upon the Issuer's substitution, held by the Trustee to secure the obligations of the New Issuer under the Notes or, as applicable, the Trustee Claim in respect thereof;
- (ii) the New Issuer has obtained all necessary authorisations, governmental approvals in the country in which it has its registered office and is in a position to fulfil all its obligations in respect of the Notes without discrimination against the Noteholders in their entirety;
- (iii) the New Issuer may pay in the currency required hereunder and without being obliged to deduct or withhold any taxes or other duties of whatever nature levied by the country in which the New Issuer has its domicile or tax residence all amounts required for the fulfilment of the payment obligations arising under the Notes and the substitution shall not result in any withholding or deduction of taxes on the amounts payable under the Notes and/or the Note Collateral which would not arise if there was no such substitution;
- (iv) there shall have been delivered to the Trustee, the Bank and the Principal Paying Agent one legal opinion for each jurisdiction affected by the substitution of a law firm of recognised standing to the effect that paragraphs (i) through (iii) above have been satisfied and that no additional expenses or legal disadvantages of any kind arise for the Noteholders from the substitution;
- (v) the substitution, in the professional judgement of the Trustee, will not adversely affect the interests of the Transaction Creditors and each Rating Agency has given a written confirmation that the substitution shall not adversely affect its rating of the Notes; and
- (vi) the Issuer and the New Issuer enter into such agreements and execute such documents as the Trustee considers necessary for the effectiveness of the substitution.

Upon fulfilment of the above conditions the New Issuer shall in every respect substitute the Issuer and the Issuer shall be released vis-à-vis the Noteholders from all its obligations as issuer

of the Notes and party to the Transaction Documents.

## **17.2 Notice of Substitution**

The New Issuer shall give notice of the substitution to the Noteholders pursuant to Section 15 (Form of Notices) with a copy to the Irish Stock Exchange. Upon the substitution, the New Issuer shall prepare a supplement to the Prospectus in accordance with the rules of the Irish Stock Exchange and, with respect to such supplement, take all measures required by the rules of the Irish Stock Exchange.

## **17.3 Effects of Substitution**

Upon the substitution, each reference to the Issuer in the Terms and Conditions shall from then on be deemed to be a reference to the New Issuer and any reference to the country in which the Issuer has its registered office, domicile or residency for tax purposes, as relevant, shall from then on be deemed to be a reference to the country in which the New Issuer has its registered office, domicile or residency for tax purposes, as relevant.

## **18. MISCELLANEOUS**

### **18.1 Presentation Period**

The presentation period for a Global Note provided in § 801(1), sentence 1 of the German Civil Code (*Bürgerliches Gesetzbuch*) shall end five years after the date on which the last payment in respect of the Notes represented by such Global Note was due.

### **18.2 Replacement of Global Notes**

If a Global Note is lost, stolen, damaged or destroyed, it may be replaced by the Issuer upon payment by the claimant of the costs arising in connection therewith. As a condition of replacement, the Issuer may require the fulfilment of certain conditions, the provision of proof regarding the existence of indemnification and/or the provision of adequate collateral. In the event of a Global Note being damaged, such Global Note shall be surrendered before a replacement is issued. In the event of a Global Note being lost or destroyed, the foregoing shall not limit any right to file a petition for the annulment of such Global Note pursuant to the statutory provisions.

### **18.3 Place of Performance**

Place of performance of the Notes shall be Frankfurt am Main, Germany.

### **18.4 Severability**

Should any of the provisions hereof be or become invalid in whole or in part, the other provisions shall remain in force.

### **18.5 Relation to the A1 Senior Guarantee Counterparty, the A2 Senior Guarantee Counterparty, the Class E Swap Counterparty and the Junior Investor**

Any reference in the Terms and Conditions to the A1 Senior Guarantee Counterparty, the A2 Senior Guarantee Counterparty, the Class E Swap Counterparty and/or the Junior Investor (including by reference to the Transaction Creditors) shall not entitle any Noteholder to invoke any of the rights of the A1 Senior Guarantee Counterparty, if any, the A2 Senior Guarantee Counterparty, if any, the Class E Swap Counterparty or the Junior Investor, if any, under the Trust Agreement, or the A1 Senior Guarantee, if any, the A2 Senior Guarantee, if any, the

Class E Swap or the Junior Credit Protection, if any, respectively, or to rely on or enforce any breach thereof and shall not limit the right of the A1 Senior Guarantee Counterparty, if any, the A2 Senior Guarantee Counterparty, if any, the Class E Swap or the Junior Investor, if any, to exercise or to waive any of these respective rights.

#### **18.6 Relation to the Bank**

Unless expressly stated in the Trust Agreement, the Bank does not assume any obligation or duty in connection with the Notes.

Any reference in the Terms and Conditions to the Bank shall not entitle any Noteholder to rely on any obligation or duty of the Bank assumed pursuant to the Trust Agreement or enforce any breach thereof.

### **19. GOVERNING LAW AND PLACE OF JURISDICTION**

#### **19.1 Governing Law**

The Notes and all of the rights and obligations of the Noteholders and the Issuer under the Notes shall be governed by the laws of the Federal Republic of Germany.

#### **19.2 Jurisdiction**

The non-exclusive place of jurisdiction for any action or other legal proceedings arising out of or in connection with the Notes shall be the District Court (*Landgericht*) in Frankfurt am Main. The German courts shall have exclusive jurisdiction over the annulment of the Global Notes in the event of their loss or destruction.

#### **19.3 Service of Process**

For service of process relating to any judicial disputes in connection with the Notes, the Issuer has appointed HEUSSEN Rechtsanwaltsgesellschaft mbH, with its seat on the Issue Date at Platz der Einheit 2 (Pollux, 28<sup>th</sup> Floor), 60327 Frankfurt am Main, Germany, Facsimile: +49 69 15242 111, Telephone: +49 69 15242 115 / +49 30 7009 4929 (Attention: Georg-René Lubinski / Ulrich Keunecke), as its authorised agent for service of process (the "**Process Agent**") in relation to any legal proceedings before a German court. The Issuer undertakes to maintain an agent for service of process in the Federal Republic of Germany as long as any Note remains outstanding.

## THE TRUST AGREEMENT

The following is the text of the Trust Agreement (without the schedules thereto). The text is attached as Appendix A to the Terms and Conditions and constitutes an integral part of the Terms and Conditions. In the case of any overlap or inconsistency in the definition of a term or expression in the Trust Agreement and elsewhere in this Prospectus, the definition in the Trust Agreement will prevail. Any statement elsewhere in this Prospectus relating to the Trust Agreement or any matter described therein is qualified in its entirety by the text of the Trust Agreement set forth below.

This Trust Agreement is entered into as of October 7, 2008 between Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft, Schwannstrasse 6, 40476 Düsseldorf, Germany (the "**Trustee**"), CoSMO Finance 2008-1 Limited, 25-26 Windsor Place, Lower Pembroke Street, Dublin 2, Ireland, (the "**Issuer**") and Commerzbank Aktiengesellschaft, Neues Hochhaus, Kaiserstrasse 16, 60261 Frankfurt am Main, Germany (the "**Bank**") and sets out the rights and obligations of the Trustee which govern the performance of its functions under this Trust Agreement in connection with:

- (i) the issue on the Issue Date by the Issuer of the following classes of credit linked notes:
  - (a) Class A1+ Floating Rate Credit Linked Notes in an initial principal amount of EUR 500,000,
  - (b) Class A2+ Floating Rate Credit Linked Notes in an initial principal amount of EUR 500,000,
  - (c) Class B Floating Rate Credit Linked Notes in an initial principal amount of EUR 38,400,000,
  - (d) Class C Floating Rate Credit Linked Notes in an initial principal amount of EUR 21,000,000,
  - (e) Class D Floating Rate Credit Linked Notes in an initial principal amount of EUR 18,000,000,
  - (f) Class E Floating Rate Credit Linked Notes in an initial principal amount of EUR 19,000,000,
  - (g) Class F Floating Rate Credit Linked Notes in an initial principal amount of EUR 8,600,000, and
  - (h) Class G Floating Rate Credit Linked Notes in an initial principal amount of EUR 13,000,000;
- (ii) a loss guarantee agreement (the "**Issuer Guarantee**") between the Issuer as protection seller and the Bank as protection buyer effective as of October 7, 2008. Pursuant to the Issuer Guarantee, the Issuer will pay to the Bank amounts equal to all Realised Losses incurred in the Reference Pool and allocated to the Notes pursuant to the Loss Allocation;
- (iii) a credit default swap (the "**Class E Swap**") between a counterparty as protection seller (the "**Class E Swap Counterparty**") and the Bank as protection buyer effective as of October 7, 2008. Pursuant to the Class E Swap, the Class E Swap Counterparty will pay to the Bank an amount equal to a specified fraction of the amounts by which the Class Principal Amount of the Class E Notes is reduced as a result of any Loss Allocation.

After the Issue Date, the Bank may enter into

- (a) a loss guarantee agreement (the "**A1 Senior Guarantee**") between a counterparty as protection seller (the "**A1 Senior Guarantee Counterparty**") and the Bank as protection buyer. Pursuant to the A1 Senior Guarantee, the A1 Senior Guarantee Counterparty will pay to the Bank amounts equal to a specified multiple of the amounts by which the Class Principal Amount of the Class A1+ Notes is reduced as a result of any Loss Allocation;
- (b) a loss guarantee agreement (the "**A2 Senior Guarantee**") between a counterparty as protection seller (the "**A2 Senior Guarantee Counterparty**") and the Bank as protection buyer. Pursuant to the A2 Senior Guarantee, the A2 Senior Guarantee Counterparty will pay to the Bank amounts equal to a specified multiple of the amounts by which the Class Principal Amount of the Class A2+ Notes is reduced as a result of any Loss Allocation; and
- (c) any type of credit protection (the "**Junior Credit Protection**") between a counterparty as protection seller (the "**Junior Investor**") and the Bank as protection buyer.

Each amount payable as a result of Realised Losses under the Junior Credit Protection, if any, the Issuer Guarantee, the Class E Swap, the A2 Senior Guarantee, if any, and the A1 Senior Guarantee, if any, is referred to as a "**Cash Settlement Amount**". The Junior Investor, if any, the Noteholders, the Class E Swap Counterparty, the A2 Senior Guarantee Counterparty, if any, and the A1 Senior Guarantee Counterparty, if any, are jointly referred to as "**Transaction Creditors**".

Terms used but not defined herein have the same meaning as in the Terms and Conditions. With respect to Realised Losses giving rise to the payment of any Cash Settlement Amount under the Junior Credit Protection, if any, the Class E Swap, the A2 Senior Guarantee, if any, or the A1 Senior Guarantee, if any, references to Loss Allocation (or allocation of Realised Losses) and Unjustified Loss Allocation shall be deemed to be references to "**Cash Settlement**" and "**Unjustified Cash Settlement**", respectively.

**NOW THEREFORE**, the parties agree as follows:

## **1. DUTIES OF THE TRUSTEE**

- 1.1 This Trust Agreement *inter alia* sets out the rights and obligations of the Trustee and the conditions for the Loss Allocation to be fulfilled by the Bank.
- 1.2 Unless otherwise stated in this Trust Agreement, the Trustee is not obliged to supervise the discharge by the Issuer or the Bank of their respective payment and other obligations arising from the Transaction Documents or to carry out duties which are the responsibility of the Issuer or the Bank.
- 1.3 Except as otherwise stated below, the requirements to be met by the Bank as set out herein, including, without limitation, the requirements set forth in Clause 9.1, 9.2, 9.3, 9.4, 9.8, Clause 10.6, Clause 12.1, Clause 14.5 and Clause 18.1, are conditions for the Loss Allocation, subject to and in accordance with Section 8.1 (Loss Allocation – Order and Conditions) of the Terms and Conditions, *provided that* there shall be against the Issuer or the Bank no recourse for or other legal effect of any non-compliance with any such requirements.

## **2. POSITION OF THE TRUSTEE**

- 2.1 The Trustee shall carry out the duties (the "**Trustee Duties**") hereunder and shall perform the

tasks and functions set out in the Terms and Conditions (this Trust Agreement and the Terms and Conditions together, the "**Trustee Documents**") as a trustee for the benefit of, and with particular regard to the interests of, the Transaction Creditors. For the avoidance of doubt, the Trustee shall have particular regard only to those interests of the Transaction Creditors which derive from their respective position in relation to the Transaction on the basis of which they qualify as Transaction Creditors (as Noteholder, Class E Swap Counterparty, A1 Senior Guarantee Counterparty, A2 Senior Guarantee Counterparty or Junior Investor), and the Trustee shall not have regard to those interests of any Transaction Creditor which derive from any other position which such Transaction Creditor might have in relation to the Transaction (including, without limitation, any particular interests of the Bank other than as a holder of Notes). In case of a conflict of interest among the interests of the A1 Senior Guarantee Counterparty, if any, the A2 Senior Guarantee Counterparty, if any, the Class E Swap Counterparty, the Noteholders and the Junior Investor, if any, the Trustee shall give priority to the interests of the A1 Senior Guarantee Counterparty, if any, and the Class A1+ Noteholders, then to the interests of the A2 Senior Guarantee Counterparty, if any, and the Class A2+ Noteholders, then to the interests of the Noteholders of the Class B Notes, then to the interests of the holders of the Class C Notes, then to the interests of the holders of the Class D Notes, then to the interests of the Class E Swap Counterparty and the holders of the Class E Notes, then to the interests of the holders of the Class F Notes, and lastly to the interests of the Junior Investor, if any, *provided that* the interests of the A1 Senior Guarantee Counterparty and the holders of the Class A1 Notes will rank *pari passu*, the interests of the A2 Senior Guarantee Counterparty and the holders of the Class A2 Notes will rank *pari passu*, and the interests of the Class E Swap Counterparty and the holders of the Class E Notes will rank *pari passu*

- 2.2 This Trust Agreement grants the Transaction Creditors the right to demand that the Trustee perform the Trustee Duties (contract for the benefit of a third party (*echter Vertrag zugunsten Dritter*) pursuant to § 328(1) of the German Civil Code (*Bürgerliches Gesetzbuch*)). For the avoidance of doubt, § 334 of the German Civil Code (*Bürgerliches Gesetzbuch*) shall also apply. The Bank and the Issuer shall also have the right to demand that the Trustee perform the Trustee Duties.

### 3. TRUSTEE CLAIM; ACCOUNTS

- 3.1 The Issuer hereby grants the Trustee a separate claim (the "**Trustee Claim**") (*Treuhänderanspruch*), entitling the Trustee to demand from the Issuer:

- (i) that any present or future obligations of the Issuer under the Notes be fulfilled, and
- (ii) if a Foreclosure Event has occurred or, the occurrence thereof is, in the professional judgement of the Trustee, imminent, and insolvency proceedings have not been instituted against the assets of the Trustee that any payment in respect of amounts owed under the Notes will be made to, and at all times prior to the on-payment to the Noteholders held in, a trust account (*Treuhandkonto*) of the Trustee for on-payment to the relevant Noteholders. The Trustee shall on-pay any amount so received to the Noteholders without undue delay.

The obligations of the Issuer to make payments to the relevant Noteholders shall remain unaffected. The Trustee Claim may be enforced separately from the Noteholders' claim in respect of the same payment obligation of the Issuer. In the case of a payment pursuant to (ii) above, the Issuer and each Noteholder shall have a claim against the Trustee for payment on to the relevant Noteholders. The relevant obligation of the Issuer under the Notes shall only be fulfilled once the on-payment to the relevant Noteholders by the Trustee has occurred. For the avoidance of doubt, upon on-payment by the Trustee to the Noteholders the liability of the Issuer under the Notes in respect of the same payment obligation shall be discharged to the extent of the sums so on-paid and if the Trustee makes such on-payment through Euroclear or



Clearstream, Luxembourg, Section 6.3 (Payments – Discharge) of the Terms and Conditions shall apply in respect of such on-payment and the discharge of the Issuer in respect of the related payment obligation under the Notes. Similarly, upon payment by the Issuer to the Noteholders the right of the Trustee to request a payment pursuant to (ii) above in respect of the same payment obligation of the Issuer shall cease to exist to the extent of the sums so paid by the Issuer.

For the avoidance of doubt, the obligation of the Trustee to on-pay any amounts received under (ii) above without undue delay to the Noteholders shall not be affected by the Trustee's resignation or other termination of its appointment as a trustee for the purposes of the Transaction. In particular, on or promptly after the Trustee Resignation Effective Date, the Trustee shall on-pay to the Noteholders any amounts standing to the credit of any trust account pursuant to (ii) above.

3.2 The Issuer has opened and shall maintain for the purposes of the Transaction the following accounts:

- (i) a current account in EUR (the "**Transaction Account**") with Citigroup Global Markets Deutschland AG & Co. KGaA, Frankfurter Welle, Reuterweg 16, 60323 Frankfurt am Main, Germany as account bank (in such capacity, the "**Transaction Account Bank**" which term shall also include any replacement Transaction Account Bank pursuant hereto) opened pursuant to an agreement between the Issuer, the Trustee and the Transaction Account Bank dated October 7, 2008, as amended from time to time (the "**Transaction Account Agreement**"); and
- (ii) an account (the "**Cash Deposit Account**") with the Bank (in such capacity, the "**Cash Deposit Account Bank**" which term shall also include any replacement Cash Deposit Account Bank pursuant hereto) on which the Cash Deposit shall be deposited pursuant to an agreement between the Issuer, the Trustee and the Cash Deposit Account Bank dated October 7, 2008, as amended from time to time (the "**Cash Deposit Account Agreement**").

The Transaction Account, the Cash Deposit Account and the Cash Collateral Account are referred to together as the "**Accounts**". The Transaction Account Bank, the Cash Deposit Account Bank and the Cash Collateral Account Bank are referred to together as the "**Account Banks**". The Transaction Account Agreement, the Cash Deposit Account Agreement and the Cash Collateral Account Agreement are referred to together as the "**Account Agreements**".

3.3 The Issuer may, for good cause (*aus wichtigem Grund*), with the prior written consent of the Trustee (which shall not be unreasonably withheld), (i) open a new Transaction Account or a new Cash Deposit Account with another Transaction Account Bank or another Cash Deposit Account Bank, respectively, (ii) transfer the funds credited to the Transaction Account and/or the Cash Deposit Account to such new Transaction Account or such new Cash Deposit Account, respectively, and (iii) close the Transaction Account or the Cash Deposit Account with the former Transaction Account Bank or the former Cash Deposit Account Bank, respectively. In such case the Issuer shall within 30 calendar days after receiving such written consent (i) open a new Transaction Account or a new Cash Deposit Account with another Transaction Account Bank or another Cash Deposit Account Bank or, subject to the consent of the Rating Agencies (other than Moody's), an affiliate of such Transaction Account Bank or such Cash Deposit Account Bank, respectively, having at least the Required Ratings from each of the Rating Agencies, (ii) transfer the funds credited to the Transaction Account or the Cash Deposit Account to such new Transaction Account or such new Cash Deposit Account, respectively, and (iii) close the Transaction Account or the Cash Deposit Account with the former Transaction Account Bank or the former Cash Deposit Account Bank, respectively.

In the event that the rating of the Transaction Account Bank or, with the consent of the Rating Agencies (other than Moody's), an affiliate of the Transaction Account Bank, the rating of which was taken into account and communicated in written form to the Trustee at the appointment of the Transaction Account Bank, or rating of the Cash Deposit Account Bank by any of the Rating Agencies is withdrawn or falls below the relevant Required Rating, the Issuer shall within 30 Business Days, or if the Issuer fails to do so, the Trustee on behalf of the Issuer as soon as it becomes aware of such downgrading but in any event not later than 30 Business Days after having become aware of such downgrading shall (i) open a new Transaction Account or a new Cash Deposit Account with another Transaction Account Bank or another Cash Deposit Account Bank or, subject to the consent of the Rating Agencies (other than Moody's), an affiliate of such Transaction Account Bank or such Cash Deposit Account Bank, respectively, having at least the Required Ratings from each of the Rating Agencies, (ii) transfer any amounts standing to the credit of the Transaction Account or the Cash Deposit Account to such new Transaction Account or such new Cash Deposit Account, respectively, and (iii) close the Transaction Account or the Cash Deposit Account with the former Transaction Account Bank or the former Cash Deposit Account Bank, respectively.

**"Required Rating"** means the following ratings: A-1 (short term) by S&P and P-1 (short term) and A1 (long term) by Moody's.

- 3.4 The Issuer shall ensure that unless otherwise provided herein or instructed by the Trustee pursuant to this Trust Agreement, all payments made to the Issuer be made by way of a bank transfer to or deposit in the Transaction Account. Should any amounts payable to the Issuer be paid in any way other than by bank transfer to or deposit in the Transaction Account, the Issuer shall promptly credit such amounts to the Transaction Account.

#### **4. NOTE COLLATERAL; PLEDGES**

- 4.1 On the Issue Date, the Issuer shall deposit, or cause to be deposited, an amount of EUR 119,000,000 (the "**Cash Deposit**"), being the aggregate Class Principal Amount of the Class A1+ Notes, the Class A2+ Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and the Class G Notes, in the Cash Deposit Account (the Cash Deposit, together with all present and future rights and claims under the Cash Deposit Account Agreement, including all present and future rights and claims under the Cash Deposit Account, the "**Note Collateral**").

The Issuer shall procure that all Cash Deposit Income is deposited in the Cash Deposit Account.

**"Cash Deposit Income"** means the periodical payments on the Cash Deposit which constitute the Issuer's income on the Note Collateral.

- 4.2 Pursuant to the terms of the first pledge agreement between the Issuer and the Bank dated October 7, 2008, as amended from time to time (the "**First Pledge Agreement**"), the Issuer has pledged (*verpfänden*) the Note Collateral to the Bank as security for the obligations of the Issuer under the Issuer Guarantee towards the Bank to make payments with respect to Realised Losses allocated to the Notes. The right of the Bank to foreclose on the Note Collateral shall be limited to the portion of the Note Collateral the aggregate nominal amount of which is equal to such amount of Realised Losses. The pledge under the First Pledge Agreement ranks senior to the pledge pursuant to Clause 4.3 below.
- 4.3 The Issuer hereby pledges (*verpfänden*) pursuant to §§ 1293, 1204 et seq. of the German Civil Code (*Bürgerliches Gesetzbuch*) the Note Collateral to the Trustee as trustee (*Treuhänder*) for the security purposes set forth in Clause 4.4 below. The Trustee hereby accepts such pledges.

The Issuer hereby gives notice to the Bank in its capacity as Cash Deposit Account Bank of the pledge pursuant to the preceding sentence and the Bank in its capacity as Cash Deposit Account Bank hereby confirms receipt of such notice.

- 4.4 The pledges pursuant to Clause 4.3 shall serve to secure the Trustee Claim.
- 4.5 As long as the Trustee does not take any action pursuant to Clause 4.6, the Issuer shall be entitled to administer the Note Collateral Account and the Note Collateral, to deal in accordance with Clauses 4.7 and 4.8 below with the claims and rights pledged to the Trustee pursuant to Clause 4.3 and to use any amounts credited to the Note Collateral Account from time to time to perform its obligations under the Transaction Documents.
- 4.6 The authorisation pursuant to Clause 4.5 may be withdrawn by the Trustee upon the occurrence of a Foreclosure Event or if, in the professional judgement of the Trustee such withdrawal is desirable or expedient to protect the interests of the Noteholders. The Trustee shall promptly give notice to the Issuer and the Cash Deposit Account Bank of its withdrawal of the authorisation pursuant to Clause 4.5 and upon the receipt of such notice the Cash Deposit Account Bank shall make payments only as instructed by the Trustee.
- 4.7 (i) Subject to Clause 4.7(ii) below, on any date following the Issue Date, the Issuer may, if the Issuer so elects, apply the amounts standing to the credit of the Cash Deposit Account towards the purchase of Eligible Securities, subject to confirmation by the Rating Agencies that such purchase, or (for the avoidance of doubt) any subsequent purchase of Eligible Securities, will not adversely affect the then current rating of any Class of Notes. The Issuer shall pledge, assign or otherwise charge the Eligible Securities to the Bank to secure the Issuer's obligations under the Issuer Guarantee towards the Bank and thereafter pledge, assign or otherwise charge the Eligible Securities to the Trustee to secure the Trustee Claim with respect to the payment obligations of the Issuer under the Notes. The security interests over the Eligible Securities for the benefit of the Bank shall rank senior to the security interests of the Trustee. Any reference in the Transaction Documents to the Note Collateral shall include the Eligible Securities, unless otherwise specified or the context requires otherwise.

**"Eligible Securities"** means at any time securities which are

- (a) denominated and payable in euros, or any other currency if the Issuer is sufficiently hedged against currency risks and
- (b) which
- (i) qualify as negotiable instruments, and
- (ii) are
- (A) securities issued by a member state of the European Union or institutions that have a guarantee by such member state (i.e., KfW, etc.) and have a long term rating of at least AA- by S&P and Aa3 by Moody's, or
- (B) public sector Pfandbriefe (*Öffentliche Pfandbriefe*) which have a rating of AAA by S&P and Aaa by Moody's.
- (ii) If such Eligible Securities purchased by the Issuer pursuant to Clause 4.7(i) above (A) do not have terms and conditions regarding payments of principal and interest (except for the rate of interest) matching with the corresponding Class of Notes, or (B) are not scheduled to mature prior to the Payment Date following their purchase, the Issuer shall enter into a put agreement (the **"Put Agreement"**) with a counterparty rated at least P-1 (short term) and Aa3 (long term) by Moody's and A-1 (short term) and AA- (long term) by S&P (the **"Put Counterparty"**)

granting the Issuer an option to require the Put Counterparty to purchase, from time to time, some or all of the Eligible Securities from the Issuer, at a price equal to par plus accrued interest thereon. Such option shall be exercisable by the Issuer from time to time as required for the Issuer to fulfil its payment obligations (a) to the Bank with respect to Realised Losses allocated to the Notes and (b) to the Noteholders with respect to the any amount of principal and/or interest due under the Notes.

## 5. OTHER COLLATERAL

5.1 The Issuer hereby pledges (*verpfänden*) pursuant to §§ 1204, 1273 and 1279 of the German Civil Code (*Bürgerliches Gesetzbuch*) to the Trustee for the collateral purposes set out in Clause 5.2 below the following claims and rights:

- (i) all its present and future claims and rights arising from:
  - (a) the Transaction Account Agreement, including all its present and future claims and rights under the Transaction Account,
  - (b) the agency agreement between the Issuer, the Trustee and the Principal Paying Agent dated October 2, 2008, as amended from time to time (the "**Agency Agreement**"),
  - (c) the subscription agreement for the Notes between the Issuer and Commerzbank Aktiengesellschaft (in such capacity, the "**Lead Manager**") dated October 7, 2008, as amended from time to time (the "**Subscription Agreement**"),
  - (d) the Issuer Guarantee, and
  - (e) the cash administration agreement between the Issuer, the Trustee and Citibank, N.A., London Branch, 21<sup>st</sup> Floor, Citigroup Centre, Canada Square, Canary Wharf, London E14 5LB, United Kingdom (in such capacity, the "**Cash Administrator**" which term shall also include any replacement Cash Administrator) dated October 7, 2008, as amended from time to time (the "**Cash Administration Agreement**").
- (ii) all its present and future claims and rights against the Trustee arising under this Agreement.

The Trustee hereby accepts such pledges.

5.2 The pledges pursuant to Clause 5.1 serve to secure the Trustee Claim.

5.3 The parties hereby acknowledge that the Issuer has, pursuant to the Irish Security Agreement, charged and assigned by way of security in favour of the Trustee all its present and future claims, right, title and interest in and to the Corporate Services Agreement as security for the Trustee Claim.

5.4 The Issuer hereby gives notice to the Bank of the pledge pursuant to Clause 5.1(i)(c) and (d) and the Bank hereby confirms receipt of such notice. The Issuer shall give written notice to the other debtors of the claims pledged pursuant to Clause 5.1(i) and shall provide a written confirmation to the Trustee that it has received a confirmation of receipt of such notice from each such debtor.

5.5 So long as the Trustee does not take any action pursuant to this Clause 5 the Issuer (or the Cash

Administrator on its behalf) shall be entitled to administer the Collateral pledged to the Trustee pursuant to Clause 4.3 and Clause 5.1.

- 5.6 The Trustee hereby authorises the Issuer and the Cash Administrator on the Issuer's behalf to administer the Transaction Account and the Cash Deposit Account and deal in the ordinary course of business with the Collateral pledged to the Trustee pursuant to Clause 4.3 and Clause 5.1.
- 5.7 The authorisation pursuant to Clause 5.6 may be withdrawn by the Trustee upon the occurrence of a Foreclosure Event or if, in the professional judgement of the Trustee such withdrawal is desirable or expedient to protect the interests of the Noteholders. The Trustee shall promptly give notice to the Issuer and the Transaction Account Bank of its withdrawal of the authorisation pursuant to Clause 5.6 and upon the receipt of such notice the Transaction Account Bank shall make payments only as instructed by the Trustee.
- 5.8 Following the opening of the Cash Collateral Account with the Cash Collateral Account Bank pursuant to Clause 6, the Issuer shall pledge, assign or otherwise charge all its then-present and future claims and rights under the Cash Collateral Account to the Trustee to secure the Trustee Claim.
- 5.9 To the extent that the Issuer receives any amounts under the Issuer Guarantee relating to the Unjustified Loss Allocation procedure, the Issuer shall provide for such amounts to be transferred immediately to the Cash Deposit Account.

## 6. CASH COLLATERAL

6.1 Pursuant to the Issuer Guarantee, in the event that

- (i) the rating of the Bank falls below A-1 (short term) by S&P or P-1 (short term) or A1 (long term) by Moody's, or
- (ii) the Bank ceases to be rated by S&P or Moody's (each of (i) and (ii), a "**Bank Rating Event**"),

the Bank shall, not later than 60 calendar days following such Bank Rating Event, deposit an amount into a separate account (the "**Cash Collateral Account**") with a bank (the "**Cash Collateral Account Bank**") having the Required Rating for the benefit of the Issuer sufficient to cover any one and one-half Guarantee Fees payable by the Bank (such amount, the "**Cash Collateral**"), *provided that* on each Payment Date, the Cash Collateral shall be reduced (by way of payment by the Issuer from the Cash Collateral Account to the Bank) or increased (by way of payment by the Bank to the Cash Collateral Account of the Issuer) in an amount commensurate with any reduction or increase in the Guarantee Fee expected to be payable on the following Payment Date. In the event of any default in payment of the Guarantee Fee, the Issuer shall be entitled to employ the Cash Collateral towards its payment obligation of any costs and expenses of the Issuer and/or towards any Interest Amount due or outstanding on the Notes.

"**Guarantee Fee**" means the amount payable by the Bank to the Issuer under the Issuer Guarantee calculated by the Bank as the sum of (i) the costs and expenses of the Issuer and (ii) the excess, if any, of (A) the aggregate Interest Amount payable by the Issuer on the Notes, over (B) the aggregate amount of the interest amounts due (for the avoidance of doubt, prior to any withholding or deduction on account of taxes) to the Issuer under the Note Collateral on the relevant Payment Date.

- 6.2 Pursuant to the Issuer Guarantee, in the event that, subsequent to any Bank Rating Event, the ratings of the Bank are upgraded to A-1 (short term) by S&P and P-1 (short term) and A1 (long term) by Moody's, the obligation of the Bank to maintain the Cash Collateral shall terminate and the Issuer shall on the Payment Date following such upgrading pay to the Bank from the Cash Collateral Account an amount equal to the amount of the Cash Collateral on such Payment Date.

## **7. FORECLOSURE ON COLLATERAL**

- 7.1 If and to the extent any Notes become due and subject to early redemption upon the occurrence of a Foreclosure Event the Trustee shall foreclose or cause foreclosure on the Collateral. In foreclosing on the Collateral pursuant to this Clause 7, the Trustee shall not exercise its pledge over the Collateral but shall act on behalf of the Issuer on the basis of an authorisation which is hereby granted by the Issuer. Only if such authorisation is revoked by the Issuer or ceases to be effective for any other reason, the Trustee shall exercise such pledge and foreclose on the Collateral in accordance with the applicable statutory provisions. The enforcement of the pledges granted under this Trust Agreement shall not require any enforceable judgement or other executory title (*vollstreckbarer Titel*) and Section 1277 of the German Civil Code (*Bürgerliches Gesetzbuch*) shall not apply.

"Foreclosure Event" means any of the following events:

- (i) a Default Event, or
- (ii) the Notes become due and subject to early redemption by operation of insolvency or other mandatory laws.

### **7.2 Note Collateral**

The Trustee shall foreclose on the Note Collateral by collecting payments owed on such Note Collateral unless in the professional judgement of the Trustee another method of foreclosure is desirable or expedient to protect the interests of the Noteholders.

- 7.3 Each of the Issuer and the Bank shall notify the Trustee without delay of the occurrence of a Foreclosure Event and shall provide reasonable details thereof. After it becomes aware of the occurrence of a Foreclosure Event the Trustee shall without delay give notice to the Noteholders, the Bank and the Rating Agencies of the same.

## **8. REPRESENTATIONS OF THE ISSUER**

- 8.1 The Issuer hereby represents to the Trustee that:

- (i) it is the creditor of the Collateral and it has not previously transferred, assigned, pledged or otherwise charged the Collateral in whole or in part to any third party, except in accordance with the First Pledge Agreement; and
- (ii) no third-party rights (other than under the First Pledge Agreement) to or in relation to the Collateral have been created by it or, to the best of its knowledge, exist.

- 8.2 In the event that any of the Collateral proves to be invalid the Bank shall promptly, but not later than 15 calendar days after it becomes aware of the same, provide full remedy thereof or other collateral for the Notes acceptable to the Rating Agencies, as reasonably required by the Trustee in each case.

## 9. REPORTS; DOCUMENTS; INFORMATION

9.1 With respect to each Collection Period not later than on the 14<sup>th</sup> Business Day of the month immediately preceding the relevant Payment Date (the "**Reporting Date**"), the Bank will provide the Trustee with a report on the performance of the Reference Pool (each a "**Pool Report**") including, *inter alia*:

- (i) details on the status of repayments and amounts outstanding on each Reference Claim, including details on each Direct Debit claimed back and corresponding Direct Debit Increase, as of the end of such Collection Period;
- (ii) unless the Bank has given the Non-compliance Notice pursuant to Clause 12.1 in respect of the relevant Reference Claim(s), information on each Non-complying Reference Claim, on each Non-qualifying Reference Claim and each removal of a Reference Claim or a portion thereof, as relevant, from the Reference Pool pursuant to Provision 9 (Non-compliance) of the Reference Pool Provisions;
- (iii) information on each transfer of a Reference Claim and each removal of a Reference Claim from the Reference Pool pursuant to Provision 8 (Transfers) of the Reference Pool Provisions;
- (iv) information on the determination of each Liquidated Reference Claim and determination of the Realised Losses and their allocation, including the amount of each Realised Loss;
- (v) the aggregate Outstanding Nominal Amount of all Liquidated Reference Claims and Defaulted Reference Claims as well as of all Reference Claims which are overdue for more than 90 calendar days as of the end of such Collection Period;
- (vi) information on Reference Claims with respect to which a Credit Event (irrespective of any waiver thereof) has occurred including the identification numbers or other identifiers assigned to such Reference Claim in the Reference Claim List, Outstanding Nominal Amount, frequency of payments and repayments in arrears;
- (vii) information on individual Unjustified Loss Allocations and their distribution and allocation;
- (viii) a computation of any Cash Settlement Amounts due from the Issuer, the A2 Senior Guarantee Counterparty, if any, and the A1 Senior Guarantee Counterparty, if any, respectively;
- (ix) information on debt restructuring and payment rescheduling commenced and/or concluded during the Collection Period with respect to any Reference Claim in respect of which (A) a Credit Event has occurred, or (B) any amount of principal has been foregone under the corresponding Reference Loan due to such payment rescheduling or debt restructuring;
- (x) information it has received on the occurrence of a Default Event;
- (xi) the amounts of principal (if any) payable on each Note on the related Payment Date; and
- (xii) information on each Replenishment during the Collection Period, information on the characteristics of the Reference Pool and other information necessary for the Trustee to monitor compliance with the Replenishment Conditions.

9.2 In connection with the redemption of the Notes, the Bank will provide the Trustee with the

Scheduled Maturity Report, each Replenishment Report and, if applicable, the Legal Maturity Report or the Early Redemption Report at the time specified below for each such report.

**"Scheduled Maturity Report"** means the Pool Report to be delivered to the Trustee by the Bank on the Reporting Date immediately before the Scheduled Maturity Date which includes in addition to the information pursuant to Clause 9.1, *inter alia*, the following:

- (i) details with respect to the Overdue Reference Claims for the purposes of Section 10.2 (Redemption – Scheduled Maturity and Legal Maturity) of the Terms and Conditions;
- (ii) information on determination of Appraised Losses, if applicable; and
- (iii) redemption amounts with respect to each Note to be redeemed on the Scheduled Maturity Date.

**"Legal Maturity Report"** means the Pool Report to be delivered to the Trustee by the Bank on the Reporting Date immediately before the Legal Maturity Date which includes in addition to the information pursuant to Clause 9.1, *inter alia*, the following:

- (i) determination of Appraised Losses; and
- (ii) redemption amounts with respect to each Note then outstanding.

**"Early Redemption Report"** means a report in connection with early redemption of the Notes pursuant to Section 11 (Early Redemption for Default) or Section 12 (Early Redemption by the Issuer) of the Terms and Conditions to be delivered to the Trustee by the Bank not later than on the 5<sup>th</sup> Business Day prior to the actual date of redemption of the Notes in accordance with Section 11 (Early Redemption for Default) of the Terms and Conditions or the Reporting Date immediately preceding the Early Redemption Date, as relevant, and including, *inter alia*:

- (i) the date of the actual redemption of the Notes, the Early Redemption Date or the Termination Redemption Date, as relevant;
- (ii) relevant information pursuant to Clause 9.1;
- (iii) the determination of the Appraised Losses and any other determinations pursuant to the Terms and Conditions for the purposes of the early redemption, as relevant;
- (iv) the reasons for the early redemption and determinations for the purposes of Section 11.2 (Early Redemption for Default – Method and Amount) or Section 12.2 (Early Redemption by the Issuer – Deferred Redemption) of the Terms and Conditions, if relevant;
- (v) details with respect to the Overdue Reference Claims for the purposes of Section 12.2 (Early Redemption by the Issuer – Deferred Redemption) of the Terms and Conditions, if relevant;
- (vi) details with respect to the Defaulted Reference Claims for the purposes of Section 11.2 (Early Redemption for Default – Method and Amount) of the Terms and Conditions; and
- (vii) redemption amounts with respect to each Note to be redeemed on the date of the actual redemption of the Notes, the Termination Redemption Date, the Early Redemption Date or any Payment Date following the Early Redemption Date, as relevant.

**"Replenishment Report"** means a report in connection with each Replenishment Date to be delivered to the Trustee by the Bank not later than the 10<sup>th</sup> Business Day following the relevant



Replenishment Date which includes *inter alia*:

- (i) information on each Reference Claim forming part of the Reference Pool on such Replenishment Date, including the total number of such Reference Claims;
- (ii) information on the characteristics of the Reference Pool and other information necessary for the Trustee to monitor compliance with the Replenishment Conditions; and
- (iii) stratification tables profiling the Reference Pool as of such Replenishment Date in agreed form.

The Pool Reports, the Scheduled Maturity Report, the Legal Maturity Report, the Early Redemption Report and the Replenishment Report are together referred to as the "**Reports**".

- 9.3 The Bank confirms that the initial Reference Claim List as of the Cut-off Date as provided for in Provision 2.1 of the Reference Pool Provisions (Reference Claims – Identification) has been delivered to the Trustee.
- 9.4 Subject to applicable law, regulations and contractual obligations of the Bank and/or the Servicers, in particular data protection laws and regulations and statutory, regulatory and contractual bank secrecy obligations of the Bank and/or the Servicers, and subject to Clause 18.1(ii), the Bank shall provide the Trustee with such additional information, documents and facilities as the Trustee may reasonably require for the performance of the Trustee Duties.
- 9.5 The Trustee shall take delivery of the Reports and all other documents delivered to it pursuant to this Trust Agreement and shall:
- (a) keep such documents for one year after the termination of this Trust Agreement and, at the discretion of the Bank, thereafter either destroy such documents or deliver the same to the Bank; or
  - (b) forward the documents to the successor Trustee if the Trustee is replaced in accordance with Clause 26.
- 9.6 In addition, subject to applicable law, regulations and contractual obligations of the Bank and/or the Servicers, in particular data protection laws and regulations and statutory, regulatory and contractual bank secrecy obligations of the Bank and/or the Servicers, the Bank shall grant the independent auditors of the Trustee the right to inspect, after having received reasonable notice and during normal business hours, all books, documents and data which affect the Reference Claims or the Reference Collateral.
- 9.7 Without prejudice to the provisions of Clause 29, the Trustee shall comply with the applicable data protection laws and regulations and statutory, regulatory and contractual bank secrecy obligations of the Bank and/or the Servicers and shall not disclose any Report, document or other information obtained from the Bank and/or the Servicers pursuant to this Trust Agreement to any third party without prior written consent of the Bank or the Servicers, as relevant, except to an Expert duly appointed pursuant to Clause 14, a Value Expert duly appointed pursuant to Clause 15, a vicarious agent (*Erfüllungsgehilfe*) duly appointed pursuant to Clause 20 or an Advisor duly appointed pursuant to Clause 21, *provided that* applicable data protection laws and regulations and statutory, regulatory and contractual bank secrecy obligations of the Bank and/or the Servicers are observed.
- 9.8 Unless otherwise specified or agreed with the Trustee, the Bank and/or the Servicers, as relevant, shall provide the Trustee with all Reports, documents and information in accordance with Clause 31. All Reports, documents and information provided to the Trustee shall be true, accurate and complete in all material respects.

## 10. VERIFICATION; CONFIRMATION OF LOSS ALLOCATION; INITIATION OF PROCEDURES

- 10.1 The Trustee shall check the acceptability of the Reports and other documents delivered and information otherwise provided to it pursuant to this Trust Agreement, other than the documents provided pursuant to Clause 18.1(i) and Clause 18.3(i), in light of all circumstances (*Plausibilitätsprüfung*). If these checks by the Trustee do not reveal that there is any breach of the conditions and requirements for Loss Allocation or any other risk for the Transaction Creditors due to any failure of the Issuer or the Bank duly to discharge its obligations under the Trustee Documents, the Trustee is not obliged to examine such Reports, documents or information any further. If, on the basis of such check, the Trustee comes to the conclusion that there is a breach of the conditions and requirements for Loss Allocation or any other risk for the Transaction Creditors due to any failure of the Issuer or the Bank duly to discharge its obligations under the Trustee Documents, the Trustee shall promptly notify the Bank thereof. In the event that the Bank confirms such conclusion of the Trustee, such conclusion shall be final and binding on all parties. In the event that the Bank declines to confirm such conclusion of the Trustee, the Trustee shall further notify the Issuer thereof and shall conduct such further reviews and take such other actions, including the specific procedures set out in Clauses 11 through 13, as applicable, within the scope of the Trustee Duties and subject to Clause 16 as it, in its professional judgement, considers desirable or expedient to protect the interests of the Transaction Creditors.
- 10.2 (a) In addition to the checks pursuant to Clause 10.1 above, the Trustee shall on a quarterly basis, prior to Loss Allocation on any Payment Date, verify the determination and allocation of Realised Losses in respect of each Reference Claim for which Realised Losses are to be allocated to the Notes as of the immediately following Payment Date, in each case, including whether the Credit Event Notice was received with respect to such Reference Claim, whether the Eligibility Criteria and the Replenishment Conditions were met and whether the Servicing Standards were complied with in connection with the related Reference Claim, *provided that* the Trustee has received from the Bank such information and/or documents, subject to applicable law and contractual obligations of the Bank, necessary to perform such check. If, on the basis of such check, the Trustee comes to the conclusion that the requirements for the Loss Allocation in respect of such Realised Loss have not been complied with, the Trustee shall promptly notify the Bank thereof. In the event that the Bank confirms such conclusion of the Trustee, such conclusion shall be final and binding on all parties. In the event that the Bank declines to confirm such conclusion of the Trustee, the Trustee shall further notify the Issuer and the Rating Agencies thereof and take such other actions, including the specific procedures set out in Clauses 11 through 13, as applicable, within the scope of its Trustee Duties and subject to Clause 16 as it, in its professional judgement, considers desirable or expedient to protect the interests of the Transaction Creditors.
- (b) The Trustee shall only be obliged to carry out the verifications pursuant to this Clause 10.2 if the conditions of Clause 16.2 are met.
- 10.3 The Trustee shall verify the accuracy of each Regular Notification and each Early Redemption Notification, if any, to be provided to (i) the Noteholders pursuant to Section 14 of the Terms and Conditions, (ii) the Junior Investor, if any, pursuant to the terms of the Junior Credit Protection, if any, (iii) the Class E Swap Counterparty pursuant to the terms of the Class E Swap, (iv) the A2 Senior Guarantee Counterparty, if any, pursuant to the terms of the A2 Senior Guarantee, if any, and (v) the A1 Senior Guarantee Counterparty, if any, pursuant to the provisions of the A1 Senior Guarantee, if any (each, an "**Investor Notification**"), in each case, provided to the Trustee pursuant to Clause 18, by reference to the corresponding data contained in the related Reports delivered to it by the Bank pursuant to Clause 9 in respect of the relevant

Collection Period.

- 10.4 (a) The Trustee shall, within three Business Days after delivery of the relevant Investor Notifications pursuant to Clause 10.3 together with the related Report, give a written confirmation to the Issuer and to the Bank, with a copy to the Cash Deposit Account Bank, to the effect that (i) it has performed the check (*Plausibilitätsprüfung*) of the Reports referred to in Clause 10.1, (ii) such check does not reveal any indication of breach of related conditions and requirements for Loss Allocation nor any other risk for the Transaction Creditors due to any failure of the Issuer or the Bank duly to discharge its obligations under the Trustee Documents, (iii) on the basis of its verification pursuant to Clause 10.3 the relevant Investor Notification is accurate or (iv) whether, on the basis of such check and verification, it has come to the conclusion that there is a breach of any related condition or requirement for Loss Allocation or any other risk for the Transaction Creditors due to any failure of the Issuer or the Bank duly to discharge its obligations under the Trustee Documents and/or any proposed Loss Allocation or payment to any Transaction Creditor may not be made in whole or in part.
- (b) If the Trustee, on the basis of the check performed in accordance with Clause 10.2(a), has not identified any non-compliance with any requirements for the Loss Allocation in respect of any Realised Loss, the Trustee shall promptly confirm by written notification to the Issuer and the Bank the determination and allocation of such Realised Loss. If procedures pursuant to Clauses 11 to 13 have been initiated and have been finalised to the satisfaction of the Trustee, the Trustee shall promptly confirm that such procedures have been finalised to its satisfaction and to the extent that, pursuant to the findings of the Expert in the written certificate delivered to the Trustee in accordance with Clause 14.6, a Realised Loss is to be determined and allocated to the Notes in accordance with the Terms and Conditions, the Trustee shall confirm in addition such determination and allocation by written notification to the Issuer and the Bank.
- 10.5 The Trustee shall deliver to the Issuer and the Bank as soon as possible a notice (the "**Notice**") initiating the procedure, if any, (each, a "**Procedure**") pursuant to Clauses 10.1, 10.2(a), 11, 12, 13 and/or 16. Such Notice shall provide reasonable details with respect to (i) a summary of the relevant facts and circumstances, (ii) the extent of the Trustee's disagreement with the relevant determination or calculation or other action (failure to act) of the Bank or the Issuer, if applicable, and (iii) the Trustee's reasons for such disagreement.
- 10.6 The Trustee may request, and the Bank shall provide to the Trustee, subject to Clause 18.1(ii), such further information, access to its facilities and documentation, subject to applicable law, regulations and contractual obligations of the Bank, in particular, data protection laws and regulations and statutory, regulatory and contractual bank secrecy obligations of the Bank and/or the Servicers, as the Trustee and its advisors shall require to facilitate the Procedures.

## 11. LOSS ALLOCATION PROCEDURE

- 11.1 In the event that the Trustee has reason to believe, on the basis of its checks pursuant to Clauses 10.1, 10.2 and 10.3, that a determination of a Defaulted Reference Claim or Overdue Reference Claim, if relevant, or allocation or intended allocation of Realised Losses may be unjustified in whole or in part because of the determination thereof or the allocation thereof to a particular Transaction Creditor being erroneous the Trustee shall promptly give the Bank notice thereof. In the event that the Bank confirms such determination or such allocation or intended allocation was erroneous, the conclusion of the Trustee regarding such determination or such allocation or intended allocation shall be final and binding on all parties. In the event that the Bank declines to confirm that such determination or such allocation or intended allocation was erroneous, the Trustee shall further notify the Issuer thereof and shall proceed in accordance with Clause 14. The determination and/or allocation or intended allocation of Realised Losses

shall be erroneous if, *inter alia*:

- (i) a Reference Claim has been determined to be a Liquidated Reference Claim without proper enforcement of such Reference Claim, including by foreclosure (*Verwertung*) on Reference Collateral, if relevant, in accordance with the Servicing Standards;
- (ii) a Reference Claim has been determined as a Liquidated Reference Claim at a time when further proceeds could still be reasonably expected to be received on such Reference Claim; or
- (iii) Reference Collateral securing a Reference Claim which became a Liquidated Reference Claim has been previously released in breach of the Servicing Standards.

11.2 In the event that the Trustee has reason to believe, on the basis of its checks pursuant to Clauses 10.1, 10.2 and 10.3, that an Unjustified Loss Allocation or Unjustified Cash Settlement, if any, has occurred, it shall notify the Issuer and the Bank accordingly. In the event that the Bank declines to confirm the occurrence of an Unjustified Loss Allocation or Unjustified Cash Settlement, the Trustee shall appoint an Expert pursuant to Clause 14 to determine whether an Unjustified Loss Allocation or Unjustified Cash Settlement has occurred, which Transaction Creditors have been affected thereby, and details of the re-instatement of the relevant Note Principal Amount of the affected Notes or reimbursement of the amounts of the Unjustified Cash Settlement.

## 12. REFERENCE CLAIM REMOVAL PROCEDURE

12.1 The Bank shall give notice (each, a "**Non-compliance Notice**") to the Trustee if any of the Eligibility Criteria, the Replenishment Conditions, the Servicing Standards or the requirements for transfer of a Reference Claim pursuant to Provision 8 (Transfers) of the Reference Pool Provisions have not been complied with in respect of a Reference Claim (each such Reference Claim, a "**Non-complying Reference Claim**"), unless such non-compliance has been reported in the Pool Report. The Non-compliance Notice shall include the details of the non-compliance.

12.2 Without limitation to the requirements under Provision 9(a)(ii) (Non-compliance) of the Reference Pool Provisions, on or after the delivery date of any Non-compliance Notice, the Bank may request from the Trustee a confirmation to the effect that in the professional judgement of the Trustee:

- (i) the conditions under Provision 9(a)(A) (Non-compliance) of the Reference Pool Provisions are met;
- (ii) the conditions under Provision 9(a)(B) (Non-compliance) of the Reference Pool Provisions are met;
- (iii) the relevant non-compliance affects only a part of the relevant Reference Claim;
- (iv) the relevant non-compliance has not resulted in or contributed to the Realised Loss; or
- (v) the conditions under Provision 9(b) or Provision 9(c) (Non-compliance) of the Reference Pool Provisions are met.

Such confirmation of the Trustee shall be binding in the absence of manifest error for the purposes of the Loss Allocation. The Trustee shall provide a copy of such confirmation to the Issuer. In the event the Trustee refuses to deliver such confirmation, the Trustee shall upon request of the Bank proceed in accordance with Clause 14.

- 12.3 Any removal of a Reference Claim or portion thereof, as relevant, from the Reference Pool pursuant to Provision 8 (Transfers) or Provision 9 (Non-compliance) of the Reference Pool Provisions will become effective as of the last day of the Collection Period immediately preceding the Pool Report in which the Bank has declared removal of such Reference Claim or portion thereof, as relevant.
- 12.4 Any removal of a substituted Reference Claim or portion thereof, as relevant, from the Reference Pool pursuant to Provision 6.2 (Substitution) of the Reference Pool Provisions will become effective as of the Replenishment Date immediately preceding the Replenishment Report in which the Bank has declared such Substitution.

### 13. REDEMPTION PROCEDURES

- 13.1 In the event that the Trustee has reason to believe on the basis of its checks pursuant to Clauses 10.1, 10.2 and 10.3 that a determination pursuant to Section 10 (Redemption), Section 11 (Early Redemption for Default) or Section 12 (Early Redemption by the Issuer) of the Terms and Conditions has not been made in accordance with the Terms and Conditions, it shall promptly give Notice to the Bank thereof. In the event that the Bank confirms such determination was erroneous, the conclusion of the Trustee regarding such determination shall be final and binding on all parties. In the event that the Bank declines to confirm that such determination was erroneous, the Trustee shall further notify the Issuer thereof and shall proceed in accordance with Clause 14. Any such determination shall be erroneous if, *inter alia*:
- (i) any Appraised Loss is determined in breach of the applicable provisions of the Terms and Conditions; or
  - (ii) the determination of the aggregate Outstanding Nominal Amount of the Overdue Reference Claims or Defaulted Reference Claims, as relevant, is erroneous.
- 13.2 If the Notice is received by the Bank before the Determination Date preceding the relevant redemption date the redemption will be deferred until the latter of the next Payment Date or the Payment Date following the final determination of the matter(s) in respect of which the Notice was given pursuant to the procedures under Clause 14 shall take place. Without prejudice to any applicable Unjustified Loss Allocation procedure, but subject to the last sentence of the first paragraph of Section 9.1 (Unjustified Loss Allocation – Reversal of Realised Loss) of the Terms and Conditions, if the Notice is received by the Bank on or after the Relevant Determination Date, the determinations in respect of which the Notice was given will be binding for the given redemption date.

### 14. EXPERT FOR THE PROCEDURES

- 14.1 Without prejudice to the provisions of Clause 14.4 below, upon giving a Notice pursuant to Clause 10.5 or receipt of a reasoned request pursuant to Clause 12.2, the Trustee shall appoint a disinterested third party that is an auditing firm of recognised standing but which is not an affiliate of either the Issuer, the Bank, or the Trustee (the "**Expert**") to resolve the disputed matter, acting in a manner consistent with its customary auditing standards. For the avoidance of doubt, the appointment of each Expert is for the purposes of obtaining an expert opinion (*Schiedsgutachten*) and not for arbitration (*Schiedsvertrag*).
- 14.2 Such Expert shall be selected by the Trustee in its reasonable discretion after consultation with the Bank, if practicable, having regard to the nature of the dispute and interest of the Transaction Creditors in the timely determination of the disputed issue. The Trustee shall ensure that Clause 29.2 is complied with.

- 14.3 The Trustee shall promptly notify the Issuer, the Bank and each of the Rating Agencies of such appointment and the nature of the dispute.
- 14.4 Prior to the appointment of the Expert pursuant to Clause 14.1, the Trustee may, at its sole discretion but having due regard to the interests of the Transaction Creditors, seek an amicable solution of the matter of disagreement by negotiation with the Bank.
- 14.5 Each of the Bank and the Trustee shall, upon request of the Expert, provide the Expert with such information, documents and access as the Expert may reasonably require for the performance of its duties hereunder. The Bank may limit the access of any Expert to any of its information, facilities and documentation to the extent that the Bank, based on advice of in-house legal counsel, determines that such limitation is necessary in order to avoid a violation of applicable law, regulations and/or contractual obligations of the Bank, in particular data protection laws and regulations and statutory, regulatory and contractual bank secrecy obligations of the Bank and/or the relevant Servicer.
- 14.6 Any determination by way of a written certificate of the Expert will, in the absence of manifest error, be final and binding. The Expert shall deliver such written certificate to the Trustee, with a copy to the Issuer and the Bank. To the extent that, pursuant to the findings of the Expert in such written certificate, a Realised Loss is to be determined and allocated to the Outstanding Threshold Amount and/or the Notes in accordance with the Terms and Conditions, the Trustee shall confirm such determination and allocation by written notification to the Issuer and the Bank.

## **15. EXPERT FOR DETERMINATION OF APPRAISED VALUE**

- 15.1 Promptly upon receipt of the notice from the Issuer or the Bank, as the case may be, that determination of Appraised Value is necessary for the purposes of the Transaction, including a notice of the time frame available under this Transaction for making such determination, the Trustee shall appoint a disinterested third party expert which is an auditing firm of recognised standing having an office in Germany belonging to one of the five largest, measured by turnover, accounting groups world-wide but which is not an affiliate of either the Issuer, the Bank or the Trustee or has been involved as an Expert in connection with the same Reference Claim (the "**Value Expert**") to determine the Appraised Values. For the avoidance of doubt, the appointment of the Value Expert is for the purposes of obtaining an expert opinion (*Schiedsgutachten*) and not for arbitration (*Schiedsvertrag*).
- 15.2 The Value Expert shall be selected by the Trustee in its reasonable discretion having regard to the interests of the Transaction Creditors in professional determination of the Appraised Values in timely manner. The Trustee shall ensure that Clause 29.2 is complied with and shall use all reasonable efforts to provide for a timely determination of the Appraised Values.
- 15.3 The Trustee shall promptly notify the identity of the Value Expert to the Bank, the Issuer and each of the Rating Agencies.
- 15.4 Upon request by the Trustee and/or the Value Expert, the Bank shall provide the Value Expert with such information and documents regarding the Overdue Reference Claims or Defaulted Reference Claims and access as the Value Expert may reasonably require for the determination of the Appraised Values. The Bank may limit the access of the Value Expert to any of its information, facilities and documentation of the Bank to the extent that the Bank, based on advice of in-house legal counsel, determines, that such limitation is necessary in order to avoid a violation of applicable law, regulations and contractual obligations of the Bank, in particular data protection laws and regulations and statutory, regulatory and contractual bank secrecy obligations of the Bank.

15.5 Any determination by way of a written certificate of the Value Expert shall, in the absence of manifest error, be a final and binding determination of the Value Expert for the purposes of determination of the Appraised Value as defined in Section 10.2 (Redemption – Scheduled Maturity and Legal Maturity) of the Terms and Conditions. The Value Expert shall deliver such written certificate to the Trustee with a copy to the Bank and the Issuer.

## 16. OBLIGATION OF THE TRUSTEE TO ACT

16.1 If the Trustee becomes aware on the basis of its checks pursuant to Clauses 10.1, 10.2 and 10.3 that the interests of the Transaction Creditors are at risk due to any failure by the Issuer or the Bank duly to discharge its obligations under the Trustee Documents, the Trustee shall promptly give Notice to the Issuer and the Bank thereof and, at its discretion and subject to Clause 16.2, take or initiate any of the Procedures under this Trust Agreement, appoint an Expert (pursuant to Clause 14) or a Value Expert (pursuant to Clause 15) or take such other action which the Trustee, in its professional judgement, considers desirable or expedient to protect the interests of the Transaction Creditors.

16.2 The Trustee shall only be obliged to perform its Trustee Duties if, and to the extent that:

- (a) it is convinced (on reasonable grounds) that its fees pursuant to Clause 22.1 will be paid and it will be indemnified to its satisfaction (either by reimbursement of costs or in any other way it deems appropriate) against all costs and expenses resulting from its activities pursuant to Clause 22.2 (including fees for retaining an Expert, the Value Expert or an Advisor as well as fees and expenses of any third party retained in accordance with Clause 20) and against all liability, obligations and attempts to bring any action in or out of court, (the claim for such fees and indemnification, the "**Indemnification Claim**"); or
- (b) the Issuer or, failing whom, the Bank has, upon the Trustee's request, paid an adequate advance for the Trustee's Indemnification Claim,

*provided that* any Indemnification Claim which shall be incurred or requested by the Trustee (i) in connection with or for a period of 120 calendar days following the occurrence of a Foreclosure Event and/or (ii) after the Termination Date, shall be deemed to have been satisfied in full by the amounts previously paid or advanced to the Trustee hereunder, except with respect to any fees, costs or expenses relating to the determination of Realised Losses (including the determination of Appraised Losses and Appraised Values).

## 17. REPRESENTATIONS AND UNDERTAKINGS OF THE TRUSTEE

17.1 The Trustee represents to the Issuer and the Bank that it is legally competent and in a position to perform the duties ascribed to it under the Trustee Documents and that, as at the time of concluding this Trust Agreement, a reason for terminating this Trust Agreement pursuant to Clause 26.1 has neither occurred nor to its best knowledge is foreseeable.

17.2 The Trustee undertakes without delay to provide the Issuer and the Bank with a copy of each notice it receives from a Noteholder pursuant to Section 11.1 (Early Redemption for Default – Default Events) of the Terms and Conditions.

17.3 The Trustee hereby acknowledges, having regard to the provisions of Clause 16.2, that the occurrence of a Default Event specified under (ii) of Section 11 (Early Redemption for Default – Default Events) of the Terms and Conditions will not, as such, give the Trustee the right to terminate this Trust Agreement under Clause 26.1, *provided that* it cannot be excluded that, with regard to all other circumstances and events, a good cause (*wichtiger Grund*) which would give the Trustee such right might occur when such Default Event occurs.

- 17.4 The Trustee undertakes neither to assign, in whole or in part, the Trustee Claim. The Trustee undertakes not to transfer, assign, pledge or otherwise charge the Collateral except in accordance with the Transaction Documents.
- 17.5 The Trustee undertakes, in connection with its resignation pursuant to Clause 26.1, (i) to give the Issuer and the Bank a reasonable advance notice of its intention to give notice to the Noteholder pursuant to Section 11.1(iii) (Early Redemption for Default - Default Events) of the Terms and Conditions and, if relevant, (ii) to give notice to the Noteholders pursuant to Section 11.1(iii) (Early Redemption for Default - Default Events) of the Terms and Conditions.
- 17.6 The Trustee hereby confirms that a copy of the Terms and Conditions is available to it and that it is familiar with the Terms and Conditions.
- 17.7 In the event that the short term rating of the Principal Paying Agent is withdrawn or falls below A-2 by S&P and/or P-1 by Moody's, and the long term rating of the Principal Paying Agent is withdrawn or falls below A1 by Moody's, if the Issuer fails to do so, the Trustee on behalf of the Issuer shall within 30 calendar days upon becoming aware thereof terminate the appointment of the Principal Paying Agent by giving not less than 5 calendar days' prior notice to the Principal Paying Agent and appoint another bank or financial institution as Principal Paying Agent *provided that* such successor Principal Paying Agent or any of its affiliates shall be rated at least A-2 by S&P and/or P-1/A1 by Moody's.

## **18. UNDERTAKINGS OF THE BANK AND THE ISSUER**

- 18.1 For as long as any of the Notes are outstanding the Bank shall:
- (i) as soon as practicable after publication, provide the Trustee with two copies of its latest annual report and make its latest published annual report available to the Transaction Creditors at the specified offices of the Bank and the Principal Paying Agent, if different;
  - (ii) subject to applicable law, regulations and contractual obligations of the Bank and/or the Servicers, in particular data protection laws and regulations, and subject to statutory, regulatory and contractual bank secrecy obligations of the Bank and/or the Servicers, and internal business secrecy practice of the Bank and/or the Servicers, permit the Trustee, which is an auditing firm, or if the Trustee is not an auditing firm, its auditors, an Expert and a Value Expert to inspect books and records of the Bank and/or the Servicers for the purposes of performance of the Trustee Duties and the duties under Clause 14 to give any information necessary for such purposes and to make the relevant records available for inspection;
  - (iii) subject to applicable law, regulations and contractual obligations of the Bank and/or the Servicers, in particular data protection laws and regulations, and subject to statutory, regulatory and contractual bank secrecy obligations of the Bank and/or the Servicers, and internal business secrecy practice of the Bank and/or the Servicers, execute such additional documents and take such further action as the Trustee may reasonably consider necessary or appropriate to give effect to this Trust Agreement and to ensure the validity, binding effect and enforceability of the Terms and Conditions;
  - (iv) notify the Trustee immediately of any information received that (i) the Issuer cannot discharge in full any obligation to make payments of principal and interest on the Notes pursuant to the Terms and Conditions with respect to any Payment Date, or (ii) the Bank or the Issuer is in breach of any other obligations under the Transaction Documents;
  - (v) subject to applicable law, regulations and contractual obligations of the Bank and/or the



Servicers, in particular data protection laws and regulations, and subject to statutory, regulatory and contractual bank secrecy obligations of the Bank and/or the Servicers, and internal business secrecy practice of the Bank and/or the Servicers, notify the Trustee if the interests of the Transaction Creditors with respect to the Reference Claims are impaired or jeopardised by any action of a third party, by sending a copy of any document on which the claim of the third party is based, as well as all further documents which are required or useful to enable the Trustee to file proceedings and take other actions in defence of the rights of the Transaction Creditors;

- (vi) provide the Trustee without undue delay (after all amounts expected to be recovered in respect of any Defaulted Reference Claim and allocable to its principal amount, Accrued Interest and Enforcement Costs have been received by the Bank) with the notices pursuant to Section 8.3 (Loss Allocation - Notice to Trustee) of the Terms and Conditions;
- (vii) provide the Trustee with a copy of each Investor Notification in draft form when the related Report is delivered by the Bank to the Trustee pursuant to Clause 9 on the Reporting Date, Replenishment Date or the date determined pursuant to the definition of "Early Redemption Report", immediately preceding the delivery of such Investor Notification;
- (viii) after the Trustee has given its confirmation pursuant to Clause 10.4(a), promptly, but not later than the Business Day following the receipt thereof, (a) prepare the relevant Investor Notifications in final forms, adjusting the draft forms, as necessary, based on the Trustee's confirmation, and (b) distribute the final form of the Investor Notifications (i) to the Issuer with a copy to the Rating Agencies, (ii) to the Noteholders pursuant to the Terms and Conditions or, if relevant, to the Principal Paying Agent for communication to the Noteholders pursuant to the Terms and Conditions, (iii) to the Cash Administrator, (iv) to the Junior Investor, if any, (v) to the Class E Swap Counterparty, (vi) to the A2 Senior Guarantee Counterparty, if any, and (vii) to the A1 Senior Guarantee Counterparty, if any;
- (ix) on or about the date falling four years and six months after the Issue Date, to the extent that any Note remains outstanding as of such date, provide the Issuer with a notice instructing the Issuer to arrange for the filing of a UCC continuation statement and/or any other relevant security filing to be made for the purpose of maintaining the perfection of the security interest granted by the Issuer to Trustee with respect to the guarantee of the obligations of the Transaction Account Bank, such filing to be made prior to the date falling five years after the Issue Date.

18.2 The Bank shall send or have sent, as long as no insolvency, bankruptcy, receivership, examinership, winding-up or liquidation in respect of the Bank has occurred, to the Junior Investor, if any, the Class E Swap Counterparty, the A2 Senior Guarantee Counterparty, if any, and the A1 Senior Guarantee Counterparty, if any, as long as the Junior Credit Protection, if any, the Class E Swap, the A2 Senior Guarantee, if any, or the A1 Senior Guarantee, if any, respectively, has not been terminated, a copy of each notice to be given to the Noteholders in accordance with the Terms and Conditions not later than on the day of the delivery of such notice to the Noteholders.

18.3 For as long as any of the Notes are outstanding, the Issuer shall:

- (i) as soon as practicable after publication, provide the Trustee with two copies of its latest annual financial statements and make its latest annual published financial statements available for inspection by the Transaction Creditors at the specified offices of the Bank and the Principal Paying Agent, if different;

- (ii) execute such additional documents and take such further action as the Trustee may reasonably consider necessary or appropriate to give effect to this Trust Agreement and to ensure the validity, binding effect and enforceability of the Terms and Conditions;
- (iii) notify the Trustee immediately if (a) it cannot discharge in full any obligation to make payments of principal or interest on the Notes pursuant to the Terms and Conditions with respect to any Payment Date, (b) it is in breach of any other obligations under the Transaction Documents, or becomes aware of a breach of any obligation of the Bank hereunder, or (c) the occurrence of (a) or (b) is imminent;
- (iv) without delay provide the Bank and the Trustee with a notice if the Notes become due and subject to early redemption by operation of insolvency or other mandatory laws or the occurrence thereof is imminent;
- (v) give the Bank, if different from the Principal Paying Agent, and the Trustee at least 5 calendar days' notice of its replacement of the Principal Paying Agent; and
- (vi) when requested to do so by the Bank, exercise its election right pursuant to Section 11.2(a) and (b) (Early Redemption for Default – Method and Amount) of the Terms and Conditions, Section 12.2 (Early Redemption by the Issuer – Deferred Redemption) of the Terms and Conditions or Clause 4.7 in accordance with the directions of the Bank.

18.4 For as long as any of the Notes are outstanding, the Issuer shall not be entitled without the Trustee's prior written consent (except as otherwise contemplated by the Transaction Documents) to:

- (a) engage in any business or any other activities other than:
  - (i) the performance of its obligations under this Trust Agreement, the Notes and the other Transaction Documents;
  - (ii) the enforcement of its rights;
  - (iii) the performance of any acts which are necessary or desirable in connection with (i) or (ii) above; and
  - (iv) the execution of all further documents and undertaking of all other actions, at any time and to the extent permitted by law, which, in the professional judgement of the Trustee, are necessary or desirable having regard to the interests of the Transaction Creditors in order to ensure that the Trustee Documents are always valid and effective,
- (b) hold subsidiaries (except in the case of a substitution of the Issuer pursuant to the Terms and Conditions),
- (c) dispose of any assets, including the Collateral, or any part thereof or interest therein, except as otherwise provided in (a) above,
- (d) alienate, or create or permit to subsist any pledge or other security interest in, any assets or any part thereof or interest therein, unless permitted under (a) above,
- (e) incur further indebtedness or give any guarantee or indemnity in respect of any obligation of any person, or hold itself out as responsible in respect of any obligation of any person,

- (f) have any employees,
- (g) amend or agree to an amendment of any of the Transaction Documents or its Memorandum and Articles of Association except as required by applicable law or requested by the Trustee,
- (h) acquire the obligations or securities of its shareholders,
- (i) commingle its assets with those of any other entity,
- (j) issue or repurchase shares or reduce its share capital or declare or pay dividends or any other distributions of any kind whatsoever, except as contemplated by the Transaction Documents,
- (k) open any bank account (except as contemplated by the Transaction Documents),
- (l) lease or otherwise acquire any real property (including office premises or like facilities),
- (m) consolidate or merge with any other person or convey or transfer its properties or assets substantially as an entirety to any other person, and
- (n) make any loans or advances to any entity.

18.5 The Issuer shall, except as contemplated in the Transaction Documents:

- (a) conduct its own business in its own name and hold itself out as a separate entity from any other person or entity,
- (b) pay its own liabilities out of its own funds,
- (c) observe all corporate formalities and other formalities required by its constitutional documents,
- (d) maintain its status as a qualifying company in the meaning of Section 110 of the Irish Taxes Consolidation Act, 1997,
- (e) at all times maintain at least one director who is a person that is not at the time of his appointment or at any time in the preceding five years
  - (i) a direct or indirect legal or beneficial owner of the Bank or any of its affiliates (excluding *de minimus* ownership rights),
  - (ii) a creditor, supplier, employee, officer, director, family member, manager, or contractor of the Bank or its affiliates, or
  - (iii) a person who controls (whether directly, indirectly or otherwise) the Bank or its affiliates or any creditor, supplier, employee, officer, director, manager or contractor of the Bank or its affiliates,
- (f) maintain books, records and accounts reflecting its own activities and not those of any other person, and
- (g) maintain its corporate existence and its books, records and accounts in accordance with applicable law.

## **19. ACTIONS REQUIRING CONSENT**

If the Issuer or the Bank requests that the Trustee grants its consent pursuant to the Trustee Documents or otherwise under the Transaction Documents, the Trustee may grant or withhold the requested consent at its discretion, taking into account the interests of the Transaction Creditors.

## **20. RETAINING OF THIRD PARTIES**

20.1 The Trustee may delegate the performance of its Trustee Duties, in whole or in part, to vicarious agents (*Erfüllungsgehilfen*, § 278 of the German Civil Code (*Bürgerliches Gesetzbuch*)). A more extensive delegation of the Trustee Duties is not permitted.

20.2 The Trustee shall promptly notify the Rating Agencies, the Bank and the Issuer of every instruction of a third party made pursuant to Clause 20.1.

20.3 For the purposes of appointment of the Expert or Value Expert, the Trustee shall only be liable for the exercise of due care in the selection of the Expert and/or Value Expert. The Trustee shall not be liable for the performance of the Expert and/or Value Expert.

## **21. ADVISORS**

21.1 The Trustee is authorised, in connection with the performance of the Trustee Duties, at its own discretion, to seek information and advice from legal counsel, financial consultants, banks and other experts (each an "**Advisor**") at market prices (if appropriate, after obtaining several offers).

21.2 The Trustee may rely on such written information and advice without having to make its own investigations. The Trustee shall not be liable for any damages or losses caused by its acting reasonably in reliance on information or advice of the Advisors. The Trustee shall not be liable for any negligence of the Advisors. The Trustee shall only be liable for the exercise of due care in the selection of any Advisor.

## **22. FEES AND REIMBURSEMENT OF THE TRUSTEE**

22.1 For the performance of the Trustee Duties, the Issuer will pay the Trustee a fee which shall be separately agreed between the Bank, the Issuer and the Trustee in a separate engagement letter.

22.2 The Issuer shall bear all reasonable costs and disbursements (including costs incurred in obtaining legal advice and the costs of other Advisors) incurred, and, after reasonable consultation, if practicable, with the Bank pay all reasonable advances requested, by the Trustee in connection with the performance of the Trustee Duties, including the costs and disbursements in connection with the Procedures and appointment of any Expert or Value Expert.

## **23. FEES AND EXPENSES OF THE EXPERT AND VALUE EXPERT**

The Issuer shall reimburse the Trustee for all reasonable fees, costs and disbursements (including costs of the Expert's and the Value Expert's advisors) payable by the Trustee to any Expert and/or Value Expert.

## **24. RIGHT TO INDEMNIFICATION**

The Issuer shall indemnify the Trustee against all losses, liabilities, obligations (including any taxes other than taxes on the Trustee's overall income or gains, which are imposed in the future on the services under this Trust Agreement), actions in and out of court and costs and disbursements incurred by the Trustee in connection with this Trust Agreement, unless such losses, liabilities, obligations, actions, costs and disbursements are incurred by the Trustee due to a breach of the standard of care provided for in Clause 27.

## **25. TAXES**

25.1 The Issuer shall pay all stamp duties, registration or other similar taxes to which any of the Transaction Documents or any part of the Transaction may at any time be subject.

25.2 All payments of fees and reimbursements of expenses to the Trustee shall be increased by the amount of any turnover taxes, value added taxes or similar taxes, other than taxes on the Trustee's overall income or gains, which are imposed in the future on the services under this Trust Agreement.

## **26. TERMINATION; REPLACEMENT**

26.1 Without prejudice to Clause 26.5, the Trustee may resign as Trustee for good cause (*aus wichtigem Grund*) at any time.

26.2 Subject to Clause 26.3, the Issuer shall be authorised and obliged to revoke the appointment of the Trustee as trustee under this Trust Agreement and give immediate notice thereof to the Bank and the Rating Agencies (A) for good cause (*aus wichtigem Grund*), (B) upon the written instruction of the A1 Senior Guarantee Counterparty, if any, or the A2 Senior Guarantee Counterparty, if any, upon the occurrence of good cause (*aus wichtigem Grund*), (C) after having been (i) so instructed in writing by Noteholders representing at least 75% of the aggregate Note Principal Amount of the Notes then outstanding upon the occurrence of good cause (*aus wichtigem Grund*) or (ii) informed by any of the Rating Agencies that the continued appointment of the Trustee in its capacity hereunder would adversely affect the then current rating of any Class of Notes by such Rating Agency.

26.3 In the case of insolvency, bankruptcy, receivership, examinership, winding-up or liquidation of the Issuer, the Trustee shall be obliged to resign, and shall give immediate notice thereof to the Bank, the Rating Agencies and the Issuer, if (A) so instructed in writing (i) by the A1 Senior Guarantee Counterparty, if any, or the A2 Senior Guarantee Counterparty, if any upon the occurrence of good cause (*aus wichtigem Grund*), (ii) by Noteholders representing at least 75% of the aggregate Note Principal Amount of the Notes then outstanding upon the occurrence of good cause (*aus wichtigem Grund*) or (B) informed by any of the Rating Agencies that the continued appointment of the Trustee in its capacity hereunder would adversely affect the then current rating of any Class of Notes by such Rating Agency.

26.4 Notwithstanding the provisions of Clauses 26.1 through 26.3 above, in the event that the Issuer does not comply with its obligation pursuant to Section 4.2 (Trustee – Obligation to Maintain a Trustee) of the Terms and Conditions or such non-compliance, in the reasonable opinion of the Bank, is imminent, the Bank shall appoint a successor trustee.

26.5 Any resignation by the Trustee in accordance with Clause 26.3(A)(ii) or (B), any revocation of the appointment of the Trustee in accordance with Clause 26.2(C) and any appointment of the Trustee in accordance with Clause 26.4 shall become effective only upon (i) the appointment by the Issuer or, in case of Clause 26.3, the Trustee on behalf of the Transaction Creditors or, in

the case of Clause 26.4, the Bank, of a successor trustee, (aa) which must be a bank, financial services institution, auditing firm or law firm of recognised international standing which has its principal office in Germany, and (bb) with respect to which each of the Rating Agencies (other than Moody's) that had assigned ratings to the Notes prior to such resignation or replacement confirms that the appointment of such successor trustee will not adversely affect the rating of the Notes, *provided that* to the extent such successor trustee is not an auditing firm pursuant to (aa) above, such appointment shall in addition be subject to the consent of the Class E Swap Counterparty (any lack of consent to be subject to an alternative qualifying proposal by the Class E Swap Counterparty), (ii) the transfer to such successor trustee of all authorities, powers and Collateral, granted to the Trustee under this Trust Agreement and the other Transaction Documents, and (iii) the acceptance by such successor trustee of such appointment and of the rights and obligations under the Trust Agreement and any other relevant Transaction Document. In the case of Clause 26.1, the Trustee shall use all best efforts to appoint a successor trustee not later than on the 2<sup>nd</sup> Business Day prior to the Trustee Resignation Effective Date and for so long as no successor trustee has been appointed, the Issuer and the Bank shall have the right, in consultation with each other and the Trustee, to appoint a successor trustee and each of them shall use all reasonable efforts to appoint a successor trustee not later than the 2<sup>nd</sup> Business Day prior to the Trustee Resignation Effective Date. In the case of Clause 26.2(i) and (ii) and Clause 26.3(i), respectively, the Bank and the Issuer shall use all reasonable efforts to appoint a successor trustee which meets the requirements set forth in Clause 26.5(i) not later than on the date on which the termination becomes effective.

- 26.6 The costs incurred in connection with replacing the Trustee pursuant to Clauses 26.1 through 26.4 shall be borne by the Issuer. If the replacement pursuant to Clause 26.2 or 26.3 is due to the Trustee's conduct and such conduct does not meet the standard of care pursuant to Clause 27, the Issuer shall be entitled, without prejudice to any additional rights, to demand from the Trustee the payment of an amount equal to such costs.
- 26.7 The successor trustee appointed in accordance with Clause 26.5 shall give notice of the appointment, including its address, without delay to the Issuer, the Bank and the Rating Agencies, as relevant, in accordance with this Trust Agreement, and to the Noteholders in accordance with the Terms and Conditions, or, if this is not possible, in any other appropriate way, to the Junior Investor, if any, pursuant to the Junior Credit Protection, if any, the Class E Swap Counterparty pursuant to the Class E Swap, the A2 Senior Guarantee Counterparty, if any, pursuant to the A2 Senior Guarantee, if any, and the A1 Senior Guarantee Counterparty, if any, pursuant to the A1 Senior Guarantee, if any.
- 26.8 The Trustee shall provide the successor trustee with a reasonably detailed report regarding its activities under or in connection with this Trust Agreement.
- 26.9 Upon the effectiveness of any replacement of the Trustee pursuant to Clause 26.4, the Trustee shall be released from the Trustee Duties but shall continue to be entitled to payments due to it under this Trust Agreement and outstanding as of the date of the effective replacement of the Trustee. For the avoidance of doubt, the replacement of the Trustee shall not release the Trustee from its obligations under this Trust Agreement arising prior to or in connection with the replacement. In the case of a replacement of the Trustee, all references herein to the Trustee shall be deemed to be references to the successor trustee.
- 26.10 Notwithstanding the resignation of the Trustee pursuant to Clause 26.1, the Trustee:
- (i) shall be obliged to hold and transfer and assign to a successor trustee, if any, appointed in accordance with Clause 26 its Trustee Claim together with any Collateral then existing and held by the Trustee, and
  - (ii) upon the occurrence of the Trustee Resignation Effective Date shall, for as long as no successor trustee is appointed, exercise its rights in respect of the Collateral and the

payment of principal and interest on the Notes in accordance with Section 11 (Early Redemption for Default) of the Terms and Conditions to the extent that this is reasonably required to protect the interests of the Noteholders.

## **27. STANDARD OF CARE**

The Trustee shall be liable for breach of its obligations under this Trust Agreement only if and to the extent that it fails to meet the standard of care of a prudent auditor.

## **28. EXTENT OF LIABILITY**

Without prejudice to the provisions of Clause 27, the Trustee shall not be liable for: (i) any action of the Issuer or any failure to act by the Issuer, (ii) the Notes, the Collateral or the Reference Claims being legal, valid, binding or enforceable, or for the fairness of the provisions of the Terms and Conditions, (iii) a loss of documents related to the Reference Pool and the Reference Claims not attributable to negligence of the Trustee, and (iv) the Bank's breach of its obligations to submit any Report and any other document, information or to provide access and facilities to the Trustee or an Expert or Value Expert.

## **29. CONFIDENTIALITY**

- 29.1 The Trustee shall ensure that its auditors, each Expert and Value Expert and their respective auditors, if relevant, and each Advisor as well as each third party retained in accordance with Clause 20 shall treat as confidential any information concerning the Debtors and the providers of the Reference Collateral and the business operations of the Bank and the Servicers obtained in connection with the performance of their respective duties for the purposes of this Trust Agreement. The Trustee shall only disclose such information (i) to its auditors, an Expert or a Value Expert duly appointed under this Trust Agreement and/or their respective auditors, if relevant, or an Advisor or a third party retained in accordance with Clause 20, in each case, to the extent that disclosure of such information is necessary for the performance of their duties for the purposes of this Trust Agreement, (ii) if such information is or becomes generally known in a manner not attributable to the Trustee, (iii) if the Trustee is legally required to disclose such information or requested to do so by a competent public authority or (iv) if the disclosure of such information by the Trustee is legally permitted and necessary to enforce any rights arising from the Notes or the other Transaction Documents.
- 29.2 The Trustee shall ensure that each Expert and Value Expert appointed under this Trust Agreement, prior to its appointment taking effect, each auditor of the Trustee and each Advisor of the Trustee and each third party retained by the Trustee in accordance with Clause 20 which is to perform any duty pursuant to this Trust Agreement, prior to the commencement thereof, signs a confidentiality undertaking in such form as the Trustee may, in its professional judgement require having regard to the nature of the relevant matter, for the benefit of the Trustee and the Bank to the effect that the Expert, Value Expert, the auditor, the Advisor or the third party retained as relevant, shall treat as confidential any information concerning the Debtors and the providers of the Reference Collateral and the business operations of the Bank and the Servicers obtained in connection with the performance of its duties in connection with this Trust Agreement.
- 29.3 Notwithstanding Clause 29.2 above, the Bank may, at its sole discretion and at any time, request each Expert and Value Expert appointed under this Trust Agreement and each auditor of the Trustee and each Advisor of the Trustee and each third party retained by the Trustee in accordance with Clause 20 which is to perform any duty pursuant to this Trust Agreement to sign a confidentiality undertaking in such form as the Bank may, in its professional judgement

require to the effect that the Expert, Value Expert or auditor, as relevant, shall treat as confidential any information concerning the Debtors and the providers of the Reference Collateral and the business operations of the Bank obtained in connection with the performance of its duties in connection with this Trust Agreement.

### 30. LIMITED RECOURSE; NON-PETITION AND PRIORITY OF PAYMENTS

30.1 Notwithstanding any other provision of this Trust Agreement, the Trustee and the Bank shall have recourse in respect of any claim against the Issuer hereunder or otherwise only in accordance with the priority of payments set out in Clause 30.2 (the "**Priority of Payments**"). The obligations of the Issuer under this Trust Agreement shall not be obligations or responsibilities of, or guaranteed by, any other person or entity. The Issuer shall have no assets available for payment of its obligations hereunder other than the amounts received under the Transaction Documents and other assets of the Issuer (but excluding, with respect to all obligations hereunder other than the Trustee Claim, the portion of the Guarantee Fee payable by the Bank under the Issuer Guarantee relating to the interest amounts payable under the Notes, the amounts received under the Note Collateral and/or the amounts held in the Cash Deposit Account) and such assets shall be applied in accordance with the Priority of Payments. Claims in respect of any shortfall shall be extinguished and, without prejudice to any termination rights, the failure to make any payment in respect of any such shortfall shall in no circumstances constitute default by the Issuer. Neither the Trustee nor the Bank may take steps against the Issuer to recover any sum so unpaid and, in particular, each of the Trustee and the Bank shall not petition or take any other step or action for the winding-up, examinership, liquidation or dissolution of the Issuer nor for the appointment of a liquidator, examiner, receiver or other person in respect of the Issuer or its assets.

The provisions of this Clause 30.1 shall survive any termination of this Trust Agreement.

- 30.2 (a) Any amounts received by the Issuer under the Note Collateral and/or held in the Cash Deposit Account, including the proceeds from the foreclosure thereof, shall be applied to satisfy the payment obligations of the Issuer towards the Bank under the Issuer Guarantee to the extent so required by the first ranking pledge of the Bank over such Collateral.
- (b) Any amounts received by the Issuer under the Collateral, including the proceeds from the foreclosure thereof, and not applied pursuant to (a) above as well as the guarantee fee received by the Issuer from the Bank under the Issuer Guarantee shall be applied to satisfy the payment obligations of the Issuer under the Notes in the Order of Seniority, *provided that* any amount applied to a particular Class of Notes shall be applied *first*, to interest and *second*, to principal on such Class.
- (c) Any credit available on the Transaction Account and not applied pursuant to paragraphs (a) and (b) above (but excluding the transaction fee payable to the Issuer under the Issuer Guarantee, which shall only be retained by the Issuer and/or paid as a dividend to its shareholders) shall be applied by the Issuer on any Payment Date to pay all fees, costs, charges, indemnities, losses, damages, claims, liabilities and expenses due and payable on such date in the following order of priority:
- (i) *first, pro rata*, any annual return or company fees and any other amounts of the Issuer then due and payable to governmental authorities in Ireland or elsewhere and any fees, costs and disbursements incurred in connection with the winding up of the Issuer;
  - (ii) *second*, any fees, costs and disbursements (including any fees, costs and disbursements of any Expert and/or Value Expert) due and payable to the Trustee in accordance with this Trust Agreement;



- (iii) *third, pro rata*, any amounts of regular fees and expenses then due and payable to the directors and the auditors, legal advisors of the Issuer, the Agents, the Cash Administrator, the Corporate Services Provider, the Account Banks, the agent for the service of process, the Irish Stock Exchange, the Rating Agencies and other operational creditors of the Issuer;
  - (iv) *fourth, pro rata*, any other amounts then due and payable by the Issuer (including, without limitation, any indemnification claims of the Issuer's directors, auditors or legal advisors, the Trustee, the Agents, the Common Depositary, the Cash Administrator, the Corporate Services Provider or the Account Banks).
- (d) The proceeds of any foreclosure on the Collateral by the Trustee not applied pursuant to paragraphs (a) and (b) above shall be applied in accordance with paragraph (c).

**"Order of Seniority"** means *first*, Class A1+, *second*, Class A2+, *third*, Class B, *fourth*, Class C, *fifth*, Class D, *sixth*, Class E, *seventh*, Class F and *eighth*, Class G Notes.

30.3 The Trustee and the Bank hereby acknowledge that the obligations of the Issuer arising under this Trust Agreement represent obligations of the Issuer only, and do not represent an interest in or obligations of any affiliate of the Issuer, in particular, any shareholder, director or officer of the Issuer.

### 31. COMMUNICATIONS

31.1 All notices to Noteholders under this Trust Agreement shall be given in accordance with Section 15 (Form of Notices) of the Terms and Conditions. All communications under this Trust Agreement shall be made by e-mail, mail or facsimile, *provided that* notices regarding termination of this Trust Agreement or the replacement of the Trustee given by e-mail or facsimile shall promptly be confirmed by mail.

31.2 Any communication under this Trust Agreement shall be in English.

31.3 Subject to written notification of any change of address, all notices under this Trust Agreement to the parties set out below shall be directed to the following addresses:

- (a) if to the Trustee:

Deloitte & Touche GmbH  
Wirtschaftsprüfungsgesellschaft  
Schwannstrasse 6  
40476 Düsseldorf  
Germany

Attn.: Ulrich Lotz, Securitisation Services  
Email: SecuritisationDE@deloitte.de  
Telephone: (+49) 211 8772-3851  
Facsimile: (+49) 211 8772-2441

(b) if to the Issuer:

CoSMO Finance 2008-1 Limited  
25-26 Windsor Place  
Lower Pembroke Street  
Dublin 2  
Ireland

Attn.: The Directors  
Telephone: +353 1 647 1550  
Facsimile: +353 1 647 1588  
Email: directors@sfmlimited.com

(c) if to the Bank:

Commerzbank Aktiengesellschaft  
Neues Hochhaus  
Kaiserstrasse 16  
60261 Frankfurt am Main  
Germany

Attn.: Portfoliomanagement Mittelstandsbank  
Telephone: (+49) 69 136 26778  
Facsimile: (+49) 69 136 54762  
Email: ZCB\_Verbriefung@commerzbank.com

(d) if to the Junior Investor (if any), the Class E Swap Counterparty, the A2 Senior Guarantee Counterparty (if any) or the A1 Senior Guarantee Counterparty (if any):

as identified to the Trustee in a side letter to the Trustee

(e) if to S&P:

Standard & Poor's Ratings Services  
20 Canada Square  
Canary Wharf  
London E14 5LH  
United Kingdom

Attn.: European Surveillance  
Facsimile: +44 20 7176 3090  
Email: ABSEuropeanSurveillance@standardandpoors.com

(f) if to Moody's:

Moody's Deutschland GmbH  
SFG ABS SME Monitoring  
An der Welle 5  
60322 Frankfurt am Main  
Germany

Attn.: SFG ABS SME Monitoring  
Facsimile: (+49) 69 70730 815  
Email: monitor.abs@moodys.com

### **32. SEVERABILITY CLAUSE**

If any provision of this Trust Agreement is or becomes invalid in whole or in part, the remaining provisions shall remain unaffected thereby.

### **33. AMENDMENTS**

33.1 This Trust Agreement (including this Clause 33) may only be amended by agreement of all parties hereto in writing and notice to the Rating Agencies. The Trustee shall only agree with any amendment (i) upon confirmation by S&P that such amendment would not adversely affect the then current rating of any Class of Notes, or (ii) upon the consent of each Noteholder of any Notes then outstanding.

33.2 For the avoidance of doubt standard business terms and conditions of the Bank as well as of the Trustee shall not apply with respect to the Transaction.

### **34. GOVERNING LAW; PLACE OF PERFORMANCE; JURISDICTION**

34.1 This Trust Agreement shall be governed by the laws of the Federal Republic of Germany.

34.2 Place of performance for the obligations of all parties is Frankfurt am Main.

34.3 The non-exclusive place of jurisdiction for any action or other legal proceedings arising out of or in connection with this Trust Agreement shall be the District Court (*Landgericht*) in Frankfurt am Main. The Issuer hereby submits to the jurisdiction of such court. The Issuer has appointed HEUSSEN Rechtsanwalts-gesellschaft mbH, with its seat on the Issue Date at Platz der Einheit 2 (Pollux, 28<sup>th</sup> Floor), 60327 Frankfurt am Main, Germany, Facsimile: +49 69 15242 111, Telephone: +49 69 15242 115 / +49 30 7009 4929 (Attention: Georg-René Lubinski / Ulrich Keunecke), as its agent who is authorised to receive service of process in relation to any legal proceedings initiated before a German court. The Issuer undertakes to maintain an agent for service of process in the Federal Republic of Germany until all of its obligations under this Trust Agreement have been fulfilled.

### **35. CONDITION PRECEDENT**

This Trust Agreement and the rights and obligations hereunder are subject to the condition precedent that the Notes will be issued and that the Issuer's claim for the payment of the subscription monies for the Notes will be satisfied pursuant to the Subscription Agreement.

### **36. COUNTERPARTS**

This Trust Agreement may be executed in one or more counterparts. Each signed counterpart shall constitute an original. Schedules attached hereto constitute an integral part of this Trust Agreement.

## DESCRIPTION OF THE REFERENCE POOL

The Reference Pool is constituted in accordance with and must comply with the Reference Pool Provisions. The following is the text of the Reference Pool Provisions which are attached as Appendix B to the Terms and Conditions and constitute an integral part of the Terms and Conditions. In case of any overlap or inconsistency in the definition of a term or expression in the Reference Pool Provisions and elsewhere in this Prospectus, the definition in the Reference Pool Provisions will prevail.

### Reference Pool Provisions

#### 1. General

The Reference Pool shall consist of certain claims for the payment of principal and interest and certain other payment claims, in each case, including partial claims, held by or for the benefit of Commerzbank Aktiengesellschaft, including its branches ("**Commerzbank**" or the "**Bank**") or any subsidiary or affiliate of Commerzbank, arising from (a) certain loans, including fixed or floating rate, amortising, bullet or annuity loans, syndicated loans, participations and sub-participations (each, a "**Reference Loan**"), (b) certain revolving credit facilities, including syndicated revolving credit facilities (each, a "**Reference Facility**") and (c) certain guarantees, including syndicated guarantees (each, a "**Reference Guarantee**") (each such claim arising from a Reference Facility or a Reference Guarantee, a "**Contingent Reference Claim**"), in each case, to corporate entities (including financial institutions) and certain other entities, and originated, including by way of acquisition from a third party, by the Bank or a subsidiary of the Bank pursuant to its credit and collection policies applicable to corporate loans consistently applied and as in effect at the time of origination, which are included in the Reference Pool as of the Cut-off Date or from time to time thereafter in accordance with Provision 2.1 (Reference Claims - Identification) and Provision 6 (Replenishment) of the Reference Pool Provisions and not removed from the Reference Pool pursuant to Provision 8 (Transfers), Provision 9 (Non-compliance) and/or Provision 6.2 (Substitution) of the Reference Pool Provisions.

Any interest in respect of a Reference Claim capitalised since the inclusion of such Reference Claim in the Reference Pool shall not be included in the principal amount of such Reference Claim but, for the avoidance of doubt, such capitalised interest may be added to the Reference Pool as a separate Reference Claim in accordance with Provision 6 (Replenishment) of the Reference Pool Provisions.

The aggregate Outstanding Nominal Amount of the Reference Claims included in the initial Reference Pool as of the beginning of business (in Frankfurt am Main) on April 30, 2008 (the "**Cut-off Date**") was approximately EUR 1,500,000,000 (the "**Initial Aggregate Principal Balance**").

#### 2. Reference Claims

##### 2.1 Identification

(A) Each Reference Claim forming part of the initial Reference Pool as of the Cut-off Date has been identified and each Reference Claim which is subsequently added to the Reference Pool as of any Replenishment Date will be identified to the Trustee in a notice in the form set out as Schedule I to the Trust Agreement in a list delivered to the Trustee on or before the Issue Date and on each Replenishment Date (each such list, the "**Reference Claim List**"), by reference to:

- (i) the account number and sub-account number, the identification number or any other relevant identifier attributed in the records of the Bank to the Reference Claim,
  - (ii) the Outstanding Nominal Amount of the Reference Claim as of the Cut-off Date or the relevant Replenishment Date, and
  - (iii) the remaining term to maturity of the Reference Claim as of the Cut-off Date or the relevant Replenishment Date.
- (B) Starting on the first Reporting Date, the Bank shall provide the Trustee on a quarterly basis with a notice identifying the Reference Claims currently forming part of the Reference Pool and the Reference Claims removed from the Reference Pool during the immediately preceding Collection Period by reference to the account number and sub-account number, identification number or any other relevant identifier attributed in the records of the Servicers to the Reference Claim.

Further details regarding each Reference Claim are contained in the related records of the Bank. Such records are attributable to the relevant Reference Claim by reference to the account number, the relevant sub-account number or any other relevant identifier referred to in (A)(i) above.

The account number, the sub-account number, identification number or any other relevant identifier attributed to a particular Reference Claim may change *provided that* the Reference Claim remains identifiable in the records of the Bank.

The Bank may maintain records and documentation relating to the Reference Claims in paper or electronic form or in any other commercially reasonable manner.

## 2.2 *Replacement in Debt Restructuring and Payment Rescheduling*

If, as a result of debt restructuring or payment rescheduling in compliance with the Servicing Standards, any Reference Claim is replaced by a new claim by way of novation, refinancing or consolidation with one or more other claims (the "**New Claim**")

- (i) such Reference Claim shall be substituted by a portion of the New Claim (such portion, the "**New Reference Claim**") the principal amount of which as of the date of such replacement, shall be equal to the Outstanding Nominal Amount of the relevant Reference Claim immediately prior to such replacement;
- (ii) for the purposes of allocating payments received on such New Reference Claim, any fees, disbursements, costs and expenses in respect of the New Claim, including as a result of such replacement, any such amounts shall be allocated to the New Reference Claim in the same proportion as the principal amount of the New Reference Claim bears to the principal amount of the New Claim; and
- (iii) the New Reference Claim shall be treated, as from the substitution, for all purposes as if it were such Reference Claim and therefore, a Credit Event which had occurred in respect of such Reference Claim prior to the substitution shall be deemed to have occurred on the New Reference Claim, any Loss Allocation with respect to the New Reference Claim shall be subject to the compliance of the Reference Claim replaced by such New Reference Claim with the Eligibility Criteria as of the Issue Date or the Replenishment Conditions as of the relevant Replenishment Date, if applicable, and the Servicing Principles, in accordance with Provision 9 (Non-compliance) of the Reference Pool Provisions, and, if relevant, a Realised Loss in respect of such New Reference Claim shall include or, as the case may be, consist entirely of any amount of principal of and interest on such Reference Claim foregone in accordance with the Servicing

Standards.

### **3. Reference Collateral**

#### *3.1 Allocation*

A Reference Claim may be secured by collateral (or portions thereof) as determined by the Bank in accordance with the standard procedure of the Bank for application of collateral as in effect from time to time, and which may from time to time be held or acquired by the Bank for its own benefit, or by a third party for the benefit of the Bank (the "**Reference Collateral**"). The Reference Collateral shall not include collateral (or a portion thereof) held for the benefit of third parties and not the Bank. Together with such Reference Claim, such Reference Collateral may from time to time secure also (i) any other payment claims (including other Reference Claims) of the Bank, and/or (ii) payment claims transferred from time to time by the Bank, together with a *pro rata* benefit from such Reference Collateral.

#### *3.2 Release*

The Bank may at any time release, or cause to be released, any Reference Collateral which does not relate to Reference Claims arising from syndicated Reference Loans, syndicated Reference Facilities or syndicated Reference Guarantees, if it either (i) in its professional judgement concludes that it is required to do so by applicable law or contractual arrangements, or (ii) does so in the ordinary course of its business and in accordance with the Credit and Collection Policies. The Reference Collateral relating to Reference Claims arising from syndicated Reference Loans, syndicated Reference Facilities or syndicated Reference Guarantees shall be released pursuant to the underlying Reference Loan documentation, syndicated Reference Facility documentation or syndicated Reference Guarantee documentation, as applicable.

### **4. Allocation of Payments and Enforcement Proceeds**

#### *4.1 Allocation of Payments with respect to non-syndicated Reference Claims*

Subject to any binding allocation of a payment to a particular claim by the relevant payer or by applicable law and subject to Provisions 4.3 below, in the event that the Bank receives a payment on a Reference Loan, Reference Facility or Reference Guarantee which is not a syndicated Reference Loan, a syndicated Reference Facility or a syndicated Reference Guarantee, respectively, or a payment on any other payment claim against the Debtor of such Reference Loan, Reference Facility or Reference Guarantee, as applicable, and such payment is less than the total amount then due under such Reference Loan, Reference Facility or Reference Guarantee, as applicable, and such other claims, the payment received shall be allocated for the purpose of Loss Allocation (including, for the avoidance of doubt, any payments received on Accrued Interest and Enforcement Costs incurred with respect to such Reference Loan, Reference Facility or Reference Guarantee) in accordance with the Bank's standard business practice.

#### *4.2 Allocation of Payments with respect to syndicated Reference Claims*

With respect to syndicated Reference Loans, syndicated Reference Facilities and syndicated Reference Guarantees, any payments received by the Agent Bank with respect to a Reference Loan, Reference Facility or Reference Guarantee shall, to the extent not superseded by any contractual arrangements or applicable provisions of law, be allocated by such Agent Bank to the related Reference Claim pursuant to the related Reference Loan documentation, Reference Facility documentation or Reference Guarantee documentation, as applicable. Such allocation by the Agent Bank of any payment to a Reference Loan will be binding on the Bank for the

purpose of Loss Allocation. Such amounts received by the Bank shall be allocated for the purpose of Loss Allocation (including, for the avoidance of doubt, any payments received on Accrued Interest and Enforcement Costs incurred with respect to such syndicated Reference Loan, syndicated Reference Facility or syndicated Reference Guarantee) in accordance with the Bank's standard business practice.

#### 4.3 *Allocation of enforcement proceeds with respect to non-syndicated Reference Claims*

For the purpose of the Loss Allocation, any (x) proceeds of any Reference Collateral securing one or more Reference Claims or (y) payments to the Bank made to redeem any Reference Collateral, in each case, which do not arise from syndicated Reference Loans, syndicated Reference Facilities or syndicated Reference Guarantees, shall be allocated to reduce the Accrued Interest, the Enforcement Costs and the outstanding principal amount of such Reference Claims as follows:

- (i) if, pursuant to the records of the Bank or any contractual or legal obligations of the Bank, any Reference Collateral is allocated to any particular claim or claims or such Reference Collateral, at any time after the Issue Date, is relevant for the calculation of regulatory capital and reserves of the Bank or other regulatory purposes with respect to such claim or claims under the applicable capital adequacy laws and regulations, in particular, pursuant to Principle I (*Grundsatz I*) of the German Principles concerning Own Funds and Liquidity of Institutions (*Grundsätze über die Eigenmittel und die Liquidität der Kreditinstitute*) of January 20, 1969, as amended or replaced from time to time, the net proceeds of such Reference Collateral or the payments made to redeem such Reference Collateral, as applicable, shall be allocated in accordance with such records of the Bank, contractual or legal obligations of the Bank or regulatory requirements, as applicable, and
- (ii) with respect to any Reference Collateral also securing claims other than Reference Claims and not allocated pursuant to (i) above, a portion of (x) the net proceeds from such Reference Collateral or (y) the payments made to redeem such Reference Collateral, as applicable, shall be allocated to the relevant Reference Claim(s); such portion shall represent the ratio between:
  - (A) the Outstanding Nominal Amount at such time of the relevant Reference Claim(s) secured by such Reference Collateral; and
  - (B) the actual outstanding principal amount, at such time of all payment claims (including contingent claims) secured by such Reference Collateral.

#### 4.4 *Allocation of enforcement proceeds with respect to syndicated Reference Claims*

Any proceeds received with respect to any Reference Collateral securing a Reference Claim arising from a syndicated Reference Loan, syndicated Reference Facility or syndicated Reference Guarantee shall, to the extent not superseded by any contractual arrangements or applicable provisions of law, be allocated to the Reference Claim pursuant to the underlying Reference Loan documentation, Reference Facility documentation or Reference Guarantee documentation, as applicable. Such allocation by the Agent Bank of any payment to a Reference Loan will be binding on the Bank for the purpose of Loss Allocation.

#### 4.5 *Non-compliance with Allocation Rules*

In the event that Provisions 4.1 to 4.4, as applicable, are not complied with in relation to the actual allocation of the relevant payments or enforcement proceeds, the allocation rules set out in such Provisions shall, for the purpose of allocation hereunder and the determination of Realised Losses, prevail over such actual allocation and such actual allocation shall be deemed

to have been effected in compliance with such Provisions, excluding any other recourse against the Bank for such non-compliance.

## 5. Eligibility Criteria

The following criteria (the "**Eligibility Criteria**") shall be met (i) as of the Issue Date in respect of each Reference Claim and (ii) as of each Replenishment Date, in respect of each Reference Claim added to the Reference Pool on such date, subject to the conditions in Provision 6.1:

- (i) the Bank is the sole legal and beneficial creditor of such Reference Claim or if the underlying Reference Loan, Reference Facility or Reference Guarantee is syndicated, such Reference Claim and related Reference Collateral are such portions of the syndicated claim and the related collateral, respectively, as have been allocated to the Bank under the terms and conditions of the related syndicated Reference Loan, syndicated Reference Facility or syndicated Reference Guarantee, as applicable, *provided that* in the case of a Contingent Reference Claim, this clause (i) shall be subject only to the relevant credit guarantee being drawn;
- (ii) such Reference Claim is free of third party rights other than (a) rights to re-transfer excess Reference Collateral, (b) security interests (including in the form of an assignment for security purposes) for the benefit of KfW, European Investment Bank, the Bundesbank, the European Central Bank or any other public sector bank entity granted in connection with the refinancing of such Reference Claim or granted in connection with another finance transaction for the benefit of one of such institutions, and (c) in the case of participations or sub-participations in syndicated loans, rights shared with other sub-participants or syndicate members or granted to a trustee on behalf of the syndicate, *provided that* the Bank ranks on a *pari passu* basis with other syndicate members;
- (iii) such Reference Claim has been originated, including by way of acquisition from a third party, by the Bank or a subsidiary of the Bank in compliance with all applicable legal provisions and the Credit and Collection Policies in effect at the time of origination and all required consents, approvals and authorisations have been obtained in respect thereof, and in respect of the ability of the Bank and the relevant subsidiary to undertake such business;
- (iv) such Reference Claim is legally valid and enforceable in accordance with its terms and applicable provisions of law;
- (v) such Reference Claim constitutes an unsubordinated, irrevocable, binding and enforceable obligation of the Debtor to pay the amount of principal as specified to the Trustee in the relevant Reference Claim List and is not subject to any defence, dispute, counterclaim or enforcement order,  
  
"**Debtor**" means with respect to a Reference Claim, the main debtor under such Reference Claim identified as such in the records of the Bank which is the counterparty of the Bank under the relevant Reference Loan, Reference Facility or Reference Guarantee, as relevant;
- (vi) the Bank has proper documentation in place for such Reference Claim, indicating, in particular, the amounts outstanding thereunder from time to time and the related Reference Collateral;
- (vii) the Reference Loan relating to such Reference Claim is (a) a loan, including fixed or floating rate, amortising, bullet or annuity loans, syndicated loans, participations and sub-participations, (b) a revolving credit facility, including syndicated revolving credit



facilities, or (c) a guarantee, including syndicated guarantees;

- (viii) no payment on such Reference Claim is overdue (irrespective of any applicable grace period);
- (ix) no litigation is pending with respect to such Reference Claim nor, to the best knowledge of the Bank is any such litigation threatened;
- (x) the final maturity of such Reference Claim falls on or before July 31, 2018;
- (xi) the Debtor of such Reference Claim is not subject to any bankruptcy proceedings and, to the best knowledge of the Bank, such Debtor is not in moratorium nor any other similar proceedings exist with respect to such Debtor;
- (xii) the information provided in respect of the Reference Claims in the prospectus (the "**Prospectus**") dated on or about October 2, 2008 published in relation to the issue of the Notes and in the relevant Reference Claim List is true, accurate and complete in all material respects,
- (xiii) such Reference Claim and the related Reference Collateral can be identified in the files of the Bank on the basis of the relevant Reference Claim List,
- (xiv) no agreement has been concluded for such Reference Claim according to which its repayment of principal or interest would be suspended;
- (xv) the Bank has not commenced enforcement proceedings against the Debtor of such Reference Claim;
- (xvi) neither the Bank, nor its subsidiaries, nor any company affiliated with Commerzbank pursuant to Section 15 et seq. of the German Stock Companies Act (*Aktiengesetz*) carries direct or indirect obligations of liability for the performance of the Reference Claims;
- (xvii) the Debtor of such Reference Claim has a Commerzbank Rating between 1.0 and 4.2 (inclusive);

"**Commerzbank Rating**" means the internal financial rating assigned at any time to any Debtor by the Bank. As of the Cut-off Date, the Bank's ratings range from the highest rating "1.0" (i.e. lowest risk category) to the lowest rating "6.5" (i.e. highest risk category) (the "**Commerzbank Master Scale**"). In the event that the Bank should replace the Commerzbank Master Scale by any other internal rating system, the Bank may with the consent of the Rating Agencies and the Trustee adjust the Eligibility Criteria, Replenishment Conditions and conditions for Substitution relating to such new rating system;

- (xviii) the Debtor of such Reference Claim is not a special purpose vehicle established for the purpose of a structured finance transaction;
- (xix) the Debtor of such Reference Claim is domiciled in Germany;
- (xx) such Reference Claim is denominated in euro;

"**euro**" or "**EUR**" means with respect to the Reference Claims, the single unified currency of the members of the European Union which adopted the euro in accordance with the Treaty on European Union, as amended, and any national currency sub-unit of euro, in each case at the time of determination; any reference to an amount denominated in euro shall include a reference to an equivalent amount in any of the national currency

sub-units of euro.

Compliance with the Eligibility Criteria as of the Issue Date is, subject to Provision 9 (Non-compliance) of the Reference Pool Provisions, a condition for the Loss Allocation and does not constitute an obligation of the Bank, any of the Servicers or the Issuer.

## 6. Replenishment

### 6.1 *Replenishment*

The Bank may, without the consent of the Trustee, add new Reference Claims to the Reference Pool (in each case, a "**Replenishment**") on the last calendar day of any month (each such day, a "**Replenishment Date**") during the period from (and including) the Issue Date until (and including) the Payment Date falling in July 2012 (such period, the "**Replenishment Period**"), if the following conditions (the "**Replenishment Conditions**") are met as of the relevant Replenishment Date:

- (i) all replenishments on the Replenishment Date, taken together, may not cause the Aggregate Principal Balance to exceed the Replenishment Cap;

"**Replenishment Cap**" means, in respect of any date, EUR 1,500,000,000 or any lower amount determined by the Bank and notified to the Trustee in the relevant Replenishment Report,

*provided that* the Replenishment Cap applicable with respect to any Replenishment Date

- (a) may not be higher than the excess of (i) the sum of (A) the Class Principal Amounts of all Classes of Notes (multiplied, in the case of Class A1+ Notes, by the A1+ Increase Factor and/or multiplied, in the case of the Class A2+ Notes, by the A2+ Increase Factor), and (B) the Outstanding Threshold Amount, over (ii) the Outstanding Nominal Amounts of all Reference Claims which have become a Liquidated Reference Claim on or prior to such Replenishment Date, but in respect of which Realised Losses have not been allocated pursuant to Section 8.1 of the Terms and Conditions;
  - (b) may not be higher than the Replenishment Cap applicable with respect to the immediately preceding Replenishment Date; and
  - (c) may not be lower than the Aggregate Principal Balance as of such Replenishment Date.
- (ii) in respect of each such new Reference Claim the Eligibility Criteria (other than the Eligibility Criterion set out in Provision 5(x) and (xii) of the Reference Pool Provisions) must be met;
  - (iii) no Replenishment Suspension Event has occurred and remains unremedied;

"**Replenishment Suspension Event**" means the failure to satisfy either the Moody's CDOROM Test or the S&P SROC Test.

"**Moody's CDOROM Test**" means, on any Replenishment Date, a test that is satisfied for a given Class of Notes if the Moody's Metric of the Reference Portfolio (including any new Reference Claims) on the Replenishment Date and as determined by the Servicer using the Moody's CDOROM, is less than or equal to Hurdle Moody's Metric.

The input parameters for the Moody's CDOROM Test are as set out in Schedule II to the Trust Agreement.

**"Moody's CDOROM"** means a dynamic, analytical computer programme developed by Moody's and used to determine the expected loss of the Reference Pool and provided to the Servicer by Moody's on or before the Issue Date, as such programme may be modified by Moody's from time to time, as agreed with the Servicer.

**"Moody's Metric"** means, in respect of any Replenishment Date, a numerical equivalent of a rating deduced from the expected loss, determined by the Servicer using Moody's CDOROM on such date. The Moody's Metric measure is time independent and all else being constant will not change over the life of the Notes.

**"Hurdle Moody's Metric"** means, in respect of a Class of Notes, on any Replenishment Date, the initial rating hurdle expressed as a Moody's Metric as shown in the table below in respect of such Class:

<i>Class of Notes</i>	<i>Hurdle Moody's Metric</i>
<i>Class A1+</i>	<i>1</i>
<i>Class A2+</i>	<i>1</i>
<i>Class B</i>	<i>3</i>
<i>Class C</i>	<i>6</i>
<i>Class D</i>	<i>9</i>
<i>Class E</i>	<i>12</i>
<i>Class F</i>	<i>15</i>

**"S&P SROC CDO Evaluator Test"** means, on any Replenishment Date, a test that is satisfied for a given Class of Notes if the S&P SROC is a positive figure greater than or equal to 100% (including any new Reference Claims), as determined by the Servicer using the S&P CDO Evaluator.

**"S&P SROC"** means, at any time, the SROC percentage calculated as follows:

$$\text{SROC Test} = \left( \frac{A - (AB)}{A - C} \right)$$

(SROC = 0 if A = C)

- A = the aggregate of the Outstanding Nominal Amount of the Reference Claims;
- B = The S&P Scenario Loss Rate relating to the relevant Class of Notes (expressed as a percentage);
- C = the greater of (a)(i) the Subordination Amount minus the aggregate of the Defaulted Reference Claims plus the Dynamic Enhancement, multiplied by (ii) the aggregate of the Outstanding Nominal Amount of the Reference Claims, and (b) zero.

**"S&P CDO Evaluator"** means a dynamic analytical computer programme developed by S&P and used to determine the credit risk of the Reference Pool and provided to the Servicer by S&P on or before the Issue Date, as such programme may be modified by S&P from time to time.

**"S&P Scenario Loss Rate"** means, as of any date, an estimate of the current cumulative loss rate, for the Reference Pool and as amended from time to time, consistent with the

initial rating by S&P with respect to the Notes, determined by the application of the S&P CDO Evaluator.

**"Subordination Amount"** means, with respect to any Class of Notes on any date, the sum of (a) the Outstanding Threshold Amount on such date and (b) the aggregate Class Principal Amounts of all Classes of Notes that rank junior to such Class of Notes for the purposes of the Loss Allocation.

**"S&P Loss Rate"** means the assumptions made by S&P, as at the time of the initial rating of the Notes, for the amount (expressed as a percentage) of a Defaulted Reference Claim that constitutes a Realised Loss.

**"Dynamic Enhancement"** means the incorporation of all alterations to available forms of credit support that may materialise on or prior to the end of the Replenishment Period, in particular excess spread. Dynamic Enhancement is expressed as a percentage of the aggregate of the Outstanding Nominal Amount of the Reference Claims.

- (iv) all Replenishments on the Replenishment Date, taken together, may not cause the Reference Pool to contravene, or if the Reference Pool is already in contravention prior to such addition, cause to worsen such contravention of the following thresholds:

- (A) the Weighted Average Life of the Reference Pool must not exceed 4 years;

The **"Weighted Average Life"** of the Reference Pool as of any Replenishment Date (the **"Relevant Replenishment Date"**) shall equal the amount calculated as the sum of the products of:

- (a) (i) the aggregate principal payments due on the Reference Claims as determined by the Bank pursuant to its standard methodology (other than on Defaulted Reference Claims and Liquidated Reference Claims) during the period from but excluding the Relevant Replenishment Date to and including the immediately following Payment Date and thereafter, from but excluding each Payment Date to and including the immediately following Payment Date until the Payment Date immediately preceding the Scheduled Maturity Date, and (ii) the aggregate principal payments remaining on the Reference Claims (other than on Defaulted Reference Claims and Liquidated Reference Claims) following the Payment Date immediately preceding the Scheduled Maturity Date, and
- (b) the period from the Relevant Replenishment Date to (i) in respect of the first period referred to in (a)(i), the Payment Date immediately following the Relevant Replenishment Date, (ii) in respect of each subsequent period referred to in (a)(i), the later of the Payment Dates referred to in (a)(i), and (iii) in respect of the (a)(ii), the Scheduled Maturity Date,

divided by the Aggregate Principal Balance minus the aggregate Outstanding Nominal Amount of the Defaulted Reference Claims and Liquidated Reference Claims as of the Relevant Replenishment Date;

- (B) the weighted average loss given default of the Reference Pool, as determined by the Bank pursuant to its standard methodology, must not exceed 65%;

- (v) all Replenishments on the Replenishment Date, taken together, may not cause the Reference Pool to contravene, or if the Reference Pool is already in contravention prior to such addition, cause to worsen such contravention of the following concentration thresholds:

- (A) the aggregate Outstanding Nominal Amounts of all Reference Claims owed by Debtors belonging to the same Moody's Industry Group must not exceed 15% of the Aggregate Principal Balance;

**"Moody's Industry Group"** means with respect to any Debtor, Moody's industry group classification of such Debtor pursuant to Moody's standard methodology;

- (B) the aggregate Outstanding Nominal Amounts of all Reference Claims owed by Debtors belonging to the same S&P Industry Group must not exceed 20% of the Aggregate Principal Balance;

**"S&P Industry Group"** means with respect to any Debtor, S&P's industry group classification of such Debtor pursuant to S&P's standard methodology;

- (C) the aggregate Outstanding Nominal Amounts of all Reference Claims owed by Debtors having an annual sales turnover larger than EUR 750,000,000 must not exceed 20% of the Aggregate Principal Balance;

- (D) the aggregate Outstanding Nominal Amounts of all Reference Claims owed by Debtors whose securities are listed on a public stock exchange must not exceed 7.5% of the Aggregate Principal Balance;

- (vi) the maturity of such new Reference Claim does not exceed 10 years following the Replenishment Date;

- (vii) the Debtor of such new Reference Claim must have a Commerzbank Rating of 4.2 or better;

- (viii) if such new Reference Claim relates to a Debtor Group having a Commerzbank Rating of 3.4 or better, the aggregate Outstanding Nominal Amounts of all Reference Claims relating to such Debtor Group may not exceed 0.6% of the Aggregate Principal Balance;

**"Debtor Group"** means with respect to a Reference Claim, the legal entities or persons forming a debtor group whether within the meaning of § 19(2) of the German Banking Act (*Kreditwesengesetz*) or from an economic point of view pursuant to the records of the Bank with the main Debtor under such Reference Claim identified as such debtor group in the records of the Bank and including such Debtor;

- (ix) if such new Reference Claim relates to a Debtor Group having a Commerzbank Rating of 3.6 or worse, the aggregate Outstanding Nominal Amounts of all Reference Claims relating to such Debtor Group may not exceed 0.4% of the Aggregate Principal Balance.

For the avoidance of doubt, if a claim does not meet any of the Replenishment Conditions on a given Replenishment Date, it can be added to the Reference Pool pursuant to this Provision 6.1 as of any subsequent Replenishment Date on which such claim meets the Replenishment Conditions.

Compliance with the Replenishment Conditions as of any Replenishment Date is, subject to Provision 9 (Non-compliance) of the Reference Pool Provisions, a condition for the Loss Allocation and does not constitute an obligation of the Bank, any of the Servicers or the Issuer.

## 6.2 *Substitution*

On any Replenishment Date, the Bank may, without the consent of the Trustee, substitute any Reference Claim or any portion thereof, the Debtor of which has a Commerzbank Rating

between 1.0 and 3.4 (inclusive), with a new Reference Claim or new Reference Claims, or any portion thereof (each, a "**Substitution**"). Each Substitution shall be effected in accordance with the Terms and Conditions and the Trust Agreement and shall be subject to the following conditions:

- (i) Provision 6.1 (Replenishment) shall apply to each Substitution as if it constituted a Replenishment; and
- (ii) the Bank (or a Servicer on its behalf) shall provide the Trustee with the Outstanding Nominal Amount of such substituted Reference Claim in the relevant Replenishment Notice.

## 7. Servicing Standards

The administration, collection and enforcement of each Reference Claim, including the foreclosure on any related Reference Collateral, will be carried out (i) by the Bank (including its branches) or any subsidiary or affiliate of the Bank (each, a "**Servicer**" which term shall include any substitute Servicer appointed in accordance with the Servicing Principles) or (ii) in the case of certain syndicated Reference Loans, syndicated Reference Facilities or syndicated Reference Guarantees, by a third party agent bank (each, an "**Agent Bank**"). Each Servicer will

- (a) service the Reference Claims in accordance with the Credit and Collection Policies (in the case of Reference Claims arising under syndicated Reference Loans, syndicated Reference Facilities or syndicated Reference Guarantees, subject to the servicing conditions under such Reference Loan documentation, Reference Facility documentation or Reference Guarantee documentation, as applicable, and to the extent it is or becomes responsible for servicing of such Reference Claims) and with the Servicing Principles; and
- (b) monitor in accordance with the Credit and Collection Policies and the Servicing Principles that the Reference Claims serviced by Agent Banks are serviced in accordance with the documentation governing the relevant Reference Loan, Reference Facility or Reference Guarantee,

*provided that* in case of any inconsistency between the Servicing Principles and the Credit and Collection Policies, the Servicing Principles shall prevail. The Servicing Principles constitute an integral part of the Terms and Conditions.

"**Credit and Collection Policies**" means the respective standard credit and collection policies of any Servicer applicable to corporate loans and collateral as in effect from time to time in accordance with the Servicing Principles, consistently applied by such Servicer.

The Credit and Collection Policies (as subject to the servicing conditions under the syndicated Reference Loan documentation, Reference Facility documentation or Reference Guarantee documentation) and the servicing principles set forth in Appendix C to the Terms and Conditions (the "**Servicing Principles**") are referred to together as the "**Servicing Standards**".

Compliance with the Servicing Standards is, subject to Provision 9 (Non-compliance) of the Reference Pool Provisions, a condition to the Loss Allocation and does not constitute an obligation of the Bank, any Servicer (if different) or the Issuer.

## 8. Transfers

Notwithstanding any assignment of a Reference Claim for security purposes, any Reference

Claim may be transferred after the Issue Date to:

- (A) a third party (other than a consolidated banking affiliate of the Bank), *provided that* (without prejudice to any substitution of any Servicer in accordance with the Servicing Principles):
  - (i) the relevant Servicer remains responsible for the servicing of the relevant Reference Claim or, in the case of a Reference Claim arising from a syndicated Reference Loan, syndicated Reference Facility or syndicated Reference Guarantee, remains responsible for acting towards the relevant Agent Bank servicing the relevant Reference Claim, in accordance with the Servicing Standards and the Bank remains responsible for the determination and allocation of Realised Losses in respect of such Reference Claim in accordance with the Terms and Conditions,
  - (ii) the standards of servicing and the determination and allocation of Realised Losses remain unchanged upon such transfer,
  - (iii) the obligations of the Bank under the Transaction Documents continue to be complied with, and
  - (iv) in the professional judgement of the Trustee such transfer shall not adversely affect the interests of the Transaction Creditors; or
- (B) any consolidated banking affiliate of the Bank, *provided that* the requirements under (A)(i) through (iii) are met.

The Rating Agencies will receive notice of any transfer pursuant to this Provision 8 from a Servicer. Irrespective of the compliance or non-compliance with the requirements set out above, any transferred Reference Claim may be removed from the Reference Pool in accordance with the procedures set out in the Trust Agreement. Except in the case of the preceding sentence, the Reference Pool and the rights and obligations under the Terms and Conditions including the Loss Allocation shall not be affected by a transfer of a Reference Claim in accordance with this Provision 8.

## **9. Non-compliance**

- (a) If in respect of a Reference Claim (i) any of the Eligibility Criteria as of the Issue Date or (ii) any of the Replenishment Conditions as of the relevant Replenishment Date or (iii) at any time on or after the Cut-off Date or the Replenishment Date on which such Reference Claim was added to the Reference Pool, as relevant, any Servicing Standard, or (iv) any requirement for transfer of such Reference Claim pursuant to Provision 8 (Transfers) of the Reference Pool Provisions is not complied with in any material respect with regard to the interests of the Transaction Creditors at the relevant time in relation to any Reference Claim, the Bank may remove such Reference Claim from the Reference Pool in accordance with the procedures set out in the Trust Agreement. Any such Reference Claim shall not qualify for the allocation of Realised Losses pursuant to the Loss Allocation unless:
  - (A) the Trustee has confirmed in writing to the Bank that in its professional judgement it concludes that such non-compliance could not cause, or increase the likelihood of the occurrence of, a Realised Loss (whether actual or potential) with respect to such Reference Claim which would otherwise not arise,

or, in each case, (if the non-compliance can be fully remedied)

- (B) such non-compliance (and any adverse effects of such non-compliance on the interest of the Transaction Creditors) is fully remedied (i) within 30 calendar days after the Bank has become aware of such non-compliance (whether by notification from the Trustee or otherwise) and (ii) prior to the occurrence of a Credit Event;

*provided that:*

- (i) if the Eligibility Criteria, Replenishment Conditions or Servicing Standards are not met in part only in respect of such Reference Claim, the Bank may remove such portion of such Reference Claim from the Reference Pool which is necessary to cure such partial non-compliance and the remaining portion of the Reference Claim shall continue to qualify for the Loss Allocation; for the avoidance of doubt, the Outstanding Nominal Amount of such Reference Claim shall be reduced by an amount equal to the portion of the Reference Claim removed,
- (ii) even where the conditions set out in (A) and/or (B) above do not apply, a Realised Loss (or any portion thereof) may nevertheless be allocated to the Notes to such extent that the Trustee has confirmed in writing to the Bank that it concludes that the relevant non-compliance has not resulted in or contributed to such Realised Loss, and
- (iii) in the case of breach of the Eligibility Criterion under Provision 5(x) (Eligibility Criteria – Reference Claim final maturity criterion) of the Reference Pool Provisions or the Servicing Principles related to the extension of the maturity of the Reference Claims, the relevant Reference Claim shall qualify for the Loss Allocation if the Credit Event in respect of such Reference Claim occurred on or before the end of the Collection Period immediately preceding the Scheduled Maturity Date.
- (b) If any of the Eligibility Criteria or Replenishment Conditions is not complied with in respect of the Reference Pool (as opposed to a specific Reference Claim) the above shall apply to all Reference Claims affected by such non-compliance. If such non-compliance can be fully remedied by removing one or more Reference Claims, the addition of which to the Reference Pool resulted in such non-compliance from the Reference Pool, the Bank may effect such removal in accordance with the Terms and Conditions and the Trust Agreement and such removal shall constitute full remedy of such non-compliance pursuant to (a)(B) above. The relevant Reference Claims will be removed from the Reference Pool based on their respective contribution to the non-compliance, beginning with the Reference Claim which, in the opinion of the Bank, contributed to the non-compliance to the greatest extent so that the removal of such Reference Claim in the opinion of the Bank cures such non-compliance in the most efficient manner.
- (c) If (i) under any Eligibility Criterion or Replenishment Condition the Outstanding Nominal Amount or number of Reference Claims is required not to exceed a given amount or number as of a given time, (ii) such Eligibility Criterion or Replenishment Condition is not complied with, (iii) such non-compliance is not remedied pursuant to paragraph (A) or (B) above, and (iv) a Realised Loss occurs in respect of one or more of such Reference Claims (each an "**Affected Reference Claim**"), then an Affected Reference Claim shall not qualify for the Loss Allocation to the extent that the removal of such Affected Reference Claim (or any portion thereof) together with all other then existing Affected Reference Claims from the Reference Pool immediately after the Issue Date or the relevant Replenishment Date, as relevant, would not have remedied the non-compliance of such Eligibility Criterion or Replenishment Condition.
- (d) Except as set out in this Provision 9, there shall be no recourse against the Bank, any Servicer or the Issuer for any non-compliance with the Eligibility Criteria, Replenishment Conditions, Servicing Standards and/or requirements for transfer of a Reference Claim pursuant to



Provision 8 (Transfers) of the Reference Pool Provisions. To the extent that a Realised Loss in respect of any Reference Claim may not be allocated to the Notes pursuant to paragraphs (a) through (c), such Reference Claim shall be referred to as a "**Non-qualifying Reference Claim**".

- (e) The Bank shall notify the Noteholders pursuant to Section 14.1 (Investor Notifications – Regular) of the Terms and Conditions of the aggregate principal amount of all Reference Claims removed from the Reference Pool pursuant to paragraph (a) or (b) above during a given Collection Period.

## Information Tables regarding the Initial Reference Pool

The following tables (the "**Information Tables**") set out, as of the Cut-off Date, the number, the current Outstanding Nominal Amounts, the term to maturity and other characteristics of the Reference Claims. (The sum of the Outstanding Nominal Amounts and the percentages in the following tables may not equal the totals due to rounding). The Outstanding Nominal Amounts are denominated in EUR.

A Reference Claim may be removed from the Reference Pool or a substitution may be made for certain Reference Claims prior to the Issue Date. In addition, the Bank may add new Reference Claims to the Reference Pool in accordance with the Replenishment Conditions for the first time on the last calendar day of month following the Issue Date. See "DESCRIPTION OF THE REFERENCE POOL – Reference Pool Provisions – Eligibility Criteria" and "– Replenishment". This may result in changes to certain of the Reference Pool characteristics as of the Issue Date in comparison with the description of the Reference Pool set out in this Prospectus. In the event that any of the characteristics of the Reference Pool on the Issue Date vary materially from those described herein, revised information regarding the Reference Pool will be made available to the purchasers of the Notes on or before the Issue Date.

The Bank has selected the Reference Claims set out in the following tables, and will select Reference Claims to be removed, substituted or added to the Reference Pool, from loans included in its portfolio meeting the Eligibility Criteria. Reference Claims will be selected in accordance with the Reference Pool provision and there can be no assurance, and the Bank makes no representation that the Reference Claims included in the Reference Pool from time to time will be of better quality or will perform in the same manner as the remaining eligible loans in the Bank's portfolio. The Reference Pool may perform in a manner better or worse than the Bank's remaining portfolio.

The actual characteristics of the Reference Pool will change over time primarily as a result of amortisation in the Reference Pool and during the Replenishment Period as a result of Replenishments in the Reference Pool. During the Replenishment Period the Bank may add new Reference Claims to the Reference Pool in accordance with the Replenishment Conditions and substitute certain Reference Claims. See "DESCRIPTION OF THE REFERENCE POOL – Reference Pool Provisions – Eligibility Criteria" and "– Replenishment".

### General Pool Information

	Reporting Date (30/Apr/2008)
Aggregate principal balance in EUR	1,500,000,000
Number of debtor groups	1,585
Number of debtors	1,749
Number of reference claims	2,888
Weighted average life	2.4 years
Average probability of default	0.75%
Average loss given default	50.6%

## Distribution by Moody's Industry Sectors

Moody's Industry Description	Number of Reference Claims	Aggregate Principal Balance in EUR	Percentage of Total
Mining, Steel, Iron & Non Precious Metals	378	216,533,165	14.4%
Beverage, Food & Tobacco	173	140,687,256	9.4%
Machinery	302	133,120,595	8.9%
Chemicals, Plastics & Rubber	215	121,833,576	8.1%
Retail Stores	193	90,013,627	6.0%
Automobile	128	77,780,849	5.2%
Electronics	181	74,127,353	4.9%
Buildings & Real Estate	142	72,231,714	4.8%
Printing & Publishing	78	57,216,861	3.8%
Ecological	128	51,331,677	3.4%
Finance	23	45,356,638	3.0%
Cargo Transport	204	45,263,490	3.0%
Containers, Packaging & Glass	74	42,576,268	2.8%
Diversified Natural Resources	69	36,504,850	2.4%
Healthcare, Education & Childcare	76	34,613,888	2.3%
Personal, Food & Miscellaneous	80	34,178,159	2.3%
Diversified/Conglomerate Service	57	28,318,700	1.9%
Banking	12	25,340,303	1.7%
Broadcasting & Entertainment	28	22,983,399	1.5%
Personal Transportation	84	22,854,165	1.5%
Farming & Agriculture	55	22,039,032	1.5%
Textiles & Leather	63	19,835,690	1.3%
Leisure, Amusement, Entertainment	25	17,367,331	1.2%
Oil & Gas	36	14,154,558	0.9%
Diversified/Conglomerate Manufacturing	13	13,576,276	0.9%
Telecommunications	3	9,190,264	0.6%
Home & Office Furnishings	20	8,411,920	0.6%
Personal & Non Durable Consumer Products	17	6,814,819	0.5%
Utilities	6	5,962,244	0.4%
Hotels, Motels, Inns & Gaming	14	4,033,958	0.3%
Aerospace & Defense	4	3,175,326	0.2%
Grocery	7	2,572,048	0.2%
Insurance	-	-	-
<b>Total</b>	<b>2,888</b>	<b>1,500,000,000</b>	<b>100%</b>

## Distribution by Standard & Poor's Industry Sectors

S&P Industry Description	Number of Reference Claims	Aggregate Principal Balance in EUR	Percentage of Total
Industrial equipment	581	283,140,881	18.9%
Conglomerates	357	157,657,935	10.5%
Chemicals & plastics	269	145,146,974	9.7%
Food products	130	123,656,116	8.2%
Surface transport	267	111,477,084	7.4%
Retailers (except food & drug)	180	84,581,723	5.6%
Financial intermediaries	35	70,696,941	4.7%
Steel	78	61,959,524	4.1%
Publishing	74	52,416,337	3.5%
Ecological services & equipment	128	51,331,677	3.4%
Equipment leasing	141	49,327,080	3.3%
Forest products	78	47,450,960	3.2%
Business equipment & services	131	43,899,234	2.9%
Containers & glass products	62	43,800,244	2.9%
Home furnishings	41	28,607,182	1.9%
Electronics/electrical	66	26,630,852	1.8%
Leisure goods/activities/movies	20	24,057,170	1.6%
Nonferrous metals/minerals	17	18,557,991	1.2%
Telecom	49	15,804,893	1.1%
Clothing/textiles	40	15,275,942	1.0%
Building & Development	30	14,392,516	1.0%
Oil & gas	42	7,620,588	0.5%
Health care	24	6,884,781	0.5%
Farming/agriculture	24	6,169,228	0.4%
Utilities	6	5,962,244	0.4%
Food service	8	1,527,183	0.1%
Public Administration / Non-corporate	5	1,070,410	0.1%
Air transport	2	586,957	0.0%
Beverage & Tobacco	3	309,355	0.0%
Insurance	-	-	-
<b>Total</b>	<b>2,888</b>	<b>1,500,000,000</b>	<b>100%</b>

## Distribution by Debtor Rating

Internal PD-Rating Categories	Number of Reference Claims	Aggregate Principal Balance in EUR	Percentage of Total
1.0 - 1.4	10	11,344,001	0.8%
1.6	11	3,568,816	0.2%
1.8	81	39,066,756	2.6%
2.0	260	145,548,942	9.7%
2.2	303	179,981,210	12.0%
2.4	322	241,992,491	16.1%
2.6	343	185,678,611	12.4%
2.8	332	149,527,882	10.0%
3.0	413	184,549,872	12.3%
3.2	286	124,478,696	8.3%
3.4	236	112,751,084	7.5%
3.6	105	42,564,605	2.8%
3.8	81	47,263,498	3.2%
4.0	83	24,634,431	1.6%
4.2	22	7,049,105	0.5%
4.4	-	-	-
4.6	-	-	-
4.8	-	-	-
5.x	-	-	-
6.x	-	-	-
<b>Total</b>	<b>2,888</b>	<b>1,500,000,000</b>	<b>100%</b>

## Geographical Distribution – Bundesländer

German Federal States	Number of Reference Claims	Aggregate Principal Balance in EUR	Percentage of Total
North Rhine-Westfalia	831	452,456,615	30.2%
Baden-Württemberg	391	182,829,383	12.2%
Hesse	244	172,600,917	11.5%
Lower Saxony	290	151,026,741	10.1%
Bavaria	289	151,000,905	10.1%
Schleswig-Holstein	143	90,028,876	6.0%
Saxony	199	66,305,858	4.4%
Hamburg	53	45,515,677	3.0%
Rhineland-Palatinate	101	44,209,531	2.9%
Saxony-Anhalt	64	41,211,995	2.7%
Thuringia	72	27,033,541	1.8%
Berlin	55	26,353,876	1.8%
Brandenburg	46	21,814,545	1.5%
Bremen	57	15,142,505	1.0%
Saarland	27	6,697,489	0.4%
Mecklenburg-Western-Pomerania	26	5,771,546	0.4%
<b>Total</b>	<b>2,888</b>	<b>1,500,000,000</b>	<b>100%</b>

13% of the Outstanding Principal Amount is related to Eastern Germany.

## Distribution by Size of Turnover

Reference Claims by Annual Turnover in Million EUR	Number of Reference Claims	Aggregate Principal Balance in EUR	Percentage of Total
less than 2.5 / others	203	98,992,849	6.6%
2.5 - 50.0	1,643	452,294,159	30.2%
50.0 - 250.0	608	409,108,552	27.3%
250.0 - 750.0	250	266,210,983	17.7%
more than 750.0	184	273,393,457	18.2%
<b>Total</b>	<b>2,888</b>	<b>1,500,000,000</b>	<b>100%</b>

## Distribution by Maturity of Reference Claims

Reference Claims by Maturity (Weighted Average Life)	Number of Reference Claims	Aggregate Principal Balance in EUR	Percentage of Total
less than 1 year	305	79,039,064	5.3%
1 - 2 years	1,265	465,637,802	31.0%
2 - 3 years	1,090	664,330,034	44.3%
3 - 4 years	190	185,125,688	12.3%
4 - 5 years	26	66,533,045	4.4%
5 - 6 years	12	39,334,367	2.6%
6 - 7 years	-	-	-
7 - 8 years	-	-	-
8 - 9 years	-	-	-
9 - 10 years	-	-	-
<b>Total</b>	<b>2,888</b>	<b>1,500,000,000</b>	<b>100%</b>

## Distribution by Size of Debtor Group

Debtor Group by Size Range of Principal Balance in Million EUR	Number of Debtor Groups	Percentage of Total	Aggregate Principal Balance in EUR	Percentage of Total
less than 1	1,257	79.3%	405,232,441	27.0%
1 - 2	141	8.9%	204,195,777	13.6%
2 - 4	101	6.4%	295,703,190	19.7%
4 - 6	36	2.3%	176,358,238	11.8%
6 - 8	13	0.8%	90,563,035	6.0%
8 - 9	37	2.3%	327,947,318	21.9%
<b>Total</b>	<b>1,585</b>	<b>100%</b>	<b>1,500,000,000</b>	<b>100%</b>

## REFERENCE POOL SERVICING

Each Servicer will service the Reference Claims, and in case of certain Reference Claims arising from syndicated loans, syndicated revolving credit facilities and syndicated credit guarantee claims serviced by Agent Banks, act towards the Agent Banks in accordance with the Credit and Collection Policies (in the case of Reference Claims arising under syndicated Reference Loans, syndicated Reference Facilities or syndicated Reference Guarantees, subject to the servicing conditions under such Reference Loan documentation, Reference Facility documentation or Reference Guarantee documentation, as applicable) and the following Servicing Principles. The Servicing Principles are attached as Appendix C to the Terms and Conditions and constitute an integral part of the Terms and Conditions.

### Servicing Principles

#### 1. Common Principles

##### 1.1 *General*

The administration, collection and enforcement of each Reference Claim, including the foreclosure on any related Reference Collateral, will be carried out by the Bank (including its branches) or any subsidiary or affiliate of the Bank (each, a "**Servicer**" which term shall include any substitute servicer appointed in accordance with these Servicing Principles) and, in the case of certain syndicated Reference Loans, syndicated Reference Facilities or syndicated Reference Guarantees, by the Agent Banks. In administering, collecting and enforcing the Reference Claims and/or foreclosing on the Reference Collateral (collectively the "**servicing**" and to "**service**") the relevant Servicer will at all times act (in the case of a syndicated Reference Loan, syndicated Reference Facility or syndicated Reference Guarantee, to the extent permissible under the relevant Reference Loan documentation, Reference Facility documentation or Reference Guarantee documentation, as applicable) in good faith and as a reasonable creditor in the protection of its own interests acting reasonably in accordance with the Credit and Collection Policies.

The relevant Servicer will take all measures it deems necessary or appropriate in its due, professional judgement to service the Reference Claims which are necessary to comply with supervisory requirements and will refrain from acting when so required by applicable law, court decisions, regulations or a competent regulator.

Unless otherwise provided herein, the relevant Servicer will perform its duties in the course of servicing the Reference Claims in compliance with the Credit and Collection Policies.

For the avoidance of doubt, the Servicing Principles do not require any Servicer to take any measure (or refrain from acting) in the course of servicing of the Reference Claim when doing so could jeopardise the Loss Allocation.

Compliance with the Servicing Standards as from the Cut-off Date or the relevant Replenishment Date, as relevant, is, subject to Provision 9 (Non-compliance) of the Reference Pool Provisions, a condition to the Loss Allocation and does not constitute an obligation of any Servicer, the Issuer or the Bank.

##### 1.2 *Amendments*

The Bank and the Trustee may agree at any time to amend or supplement the Servicing Principles, *provided that* any such amendment or supplement does not adversely affect the interests of any Transaction Creditor in a material manner, unless otherwise required by mandatory provisions of law, and the Rating Agencies receive notice thereof from the Bank.

The Bank may amend or supplement the Credit and Collection Policies in its sole discretion from time to time, *provided that* (A) if any such amendment or supplement is inconsistent with the Servicing Principles, it will not be applied with respect to the Reference Pool, (B) if such amendment or supplement may, in the professional judgement of the Bank, adversely affect the determination of the Realised Losses, Credit Events, or Appraised Values from the perspective of any of the Transaction Creditors, it will not be applied to the Reference Claims without prior consent of the Trustee, unless in the case of each of (A) or (B) otherwise required by mandatory provisions of law and (C) to the extent such amendment or supplement, in the professional judgement of the Bank, affects or may affect the interests of the Transaction Creditors, the Rating Agencies receive notice thereof from the Bank.

## **2. Payments in Arrears from Debtors, Payment Rescheduling and Debt Restructuring**

If a Debtor is in arrears with a payment due, the relevant Servicer will proceed in accordance with the Credit and Collection Policies. If these do not generally provide for the specific case at hand, the relevant Servicer will handle the case as would a reasonable creditor in the protection of its own interests.

The Trustee will allow a Servicer to exercise reasonable discretion in handling such cases of a Debtor's default within the scope of the Credit and Collection Policies. Each Servicer will exercise this discretion as would a reasonable creditor in the protection of its own interests.

In accordance with the Credit and Collection Policies and subject to the following paragraphs of this Section 2, each Servicer is authorised to agree on payment rescheduling or debt restructuring with a Debtor. In doing so, the relevant Servicer may in particular (i) defer, forego or restructure the repayment of a portion of the relevant Reference Claim or (ii) subordinate all or a portion of a Reference Claim if the Servicer is convinced, in its reasonable judgement, that in such case the aggregate amount of collections on such Reference Claim will be higher than the aggregate amount it would collect thereon had it not agreed to forego or subordinate such portion of the Reference Claim. For the avoidance of doubt, the Servicer is not required to (i) defer, forego or restructure the repayment of a portion of the relevant Reference Claim or (ii) subordinate all or a portion of a Reference Claim as part of any payment rescheduling or debt restructuring before a Credit Event with respect to such Reference Claim has occurred.

In case any Debtor falls in arrears on a payment due in a minimum amount (if any) and for a minimum period (if any), each as set forth in the credit and collection policies of the relevant Servicer, and no payment rescheduling or debt restructuring agreement has been entered into, the relevant Servicer will commence legal proceedings against the Debtor which are required to enforce the Reference Claim, and/or foreclose on the related Reference Collateral, unless the relevant Servicer concludes, in its professional judgement, that such enforcement or foreclosure would not be justified in view of the expenses and expected proceeds thereof.

With respect to any Reference Claim included in the Reference Pool as of the Cut-off Date, each Servicer will only agree to payment rescheduling or debt restructuring of such Reference Claim if the principal amount of such Reference Claim, under the altered repayment schedule or as restructured, is due to be repaid in full before the end of the Collection Period immediately preceding the Scheduled Maturity Date at the latest.

## **3. Other Changes in the Conditions of the Reference Loans, Reference Facilities and Reference Guarantees**

In addition to the cases provided for in Section 2, the relevant Servicer will be authorised to take action in the context of servicing the Reference Claims (in particular to amend contractual



provisions of the underlying Reference Loan, Reference Facility or Reference Guarantee), which in the relevant Servicer's professional judgement may affect the terms of the Reference Claims, only if doing so will, in the due and reasonable professional judgement of the relevant Servicer neither adversely affect the validity and enforceability of the Reference Claims nor reduce the value of the Reference Loans, Reference Facilities or Reference Guarantees nor result in Realised Losses or otherwise materially adversely affect the Transaction Creditors.

#### **4. Accounting**

Each Servicer will keep accounting records regarding the Reference Claims serviced by it, which will show, *inter alia*:

- (i) the identification number and any other identifiers attributed to each Reference Claim in the Reference Claim List,
- (ii) the Outstanding Nominal Amount of the Reference Claim as of the Cut-off Date or the relevant Replenishment Date, as applicable,
- (iii) the applicable nominal rate of interest per annum and any overdue interest (other than default interests),
- (iv) the repayment and interest characteristics of such Reference Claim, and
- (v) the remaining term to maturity of the Reference Claim as of the Cut-off Date or the relevant Replenishment Date, as applicable.

Accounting records, journals, daily accounts and portfolio inventories for the annual financial statements will be kept in safekeeping for a period of 4 years after the relevant accounting period, or for such longer or shorter period as required from time to time by applicable law. The accounting records with respect to the Reference Claims will be kept current and will not fall behind for more than 180 calendar days.

The relevant Servicer may maintain records and documentation relating to the Reference Claims in paper or electronic form or any other commercially reasonable manner.

#### **5. Vicarious Agents; Consultants**

Any Servicer may delegate the performance of its duties in the context of enforcing the Reference Claims and foreclosing on the Reference Collateral, in whole or in part, to vicarious agents (*Erfüllungsgehilfen*) pursuant to § 278 of the German Civil Code (*Bürgerliches Gesetzbuch*). A more extensive delegation of duties by the relevant Servicer in the context of servicing the Reference Claims is not permitted without the consent of the Trustee and confirmation from each of the Rating Agencies that such delegation will not adversely affect the rating of the Notes.

In connection with servicing the Reference Claims any Servicer may retain outside consultants and experts to the extent it deems necessary in its due, professional judgement. The relevant Servicer will select and monitor such consultants and experts with the care reasonably to be expected of a bank (*bankübliche Sorgfalt*).

#### **6. Reporting**

The Bank will deliver to the Trustee, its auditors, an Expert or a Value Expert such reports and

information and provide such access and facilities at such times as specified in the Terms and Conditions and/or the Trust Agreement.

The Servicer, if different from the Bank, will provide the Bank with such information and will provide to the Bank such access and facilities at such time as is necessary for the purposes of the preceding sentence.

## **7. Change in Servicer**

Any Servicer may be substituted in its function as Servicer of a Reference Claim by any banking institution or servicing company specialised in the servicing and administration of loans, *provided that*:

- (i) the standard of the servicing as set out in the Servicing Standards and the determination and allocation of Realised Losses remain unchanged,
- (ii) the obligations under the Transaction Documents remain to be complied with, and
- (iii) in the professional judgement of the Bank, such substitution will not adversely affect the interests of the Transaction Creditors.

In the case of any substitution pursuant to this Section 7, all references in the Terms and Conditions, including the Reference Pool Provisions, to the Servicers shall be deemed to include such new servicer.

## **8. Reference Claims Serviced by an Agent Bank**

### *Monitoring Agent Banks*

The Bank, as a syndicate bank under a syndicated Reference Loan, syndicated Reference Facility or syndicated Reference Guarantee serviced by an Agent Bank, or the relevant Servicer shall monitor the compliance with the servicing requirements under the applicable documentation governing the relevant Reference Loan, Reference Facility or Reference Guarantee by the servicing Agent Bank.

### *Enforcement*

The Bank, as a syndicate bank under a syndicated Reference Loan, syndicated Reference Facility or syndicated Reference Guarantee serviced by an Agent Bank, or the relevant Servicer shall take all actions necessary, in its professional judgement, to ensure that the relevant Agent Bank complies with its respective servicing obligations under the documentation governing the relevant Reference Loan, Reference Facility or Reference Guarantee. Such actions shall include enforcement of the Bank's rights as a syndicate bank under the relevant Reference Loan, Reference Facility or Reference Guarantee.

### *Servicing*

If, in respect of a Reference Claim under a syndicated Reference Loan, syndicated Reference Facility or syndicated Reference Guarantee serviced by an Agent Bank, the Bank becomes responsible for collecting, maintaining, enforcing of or any other servicing activity in connection with the Reference Claim, the Bank or the relevant Servicer shall carry it out in accordance with the Servicing Standards, subject only to the documentation of the relevant syndicated Reference Loan, Reference Facility or Reference Guarantee.

## CREDIT AND COLLECTION POLICIES

The following is a summary of the standard credit and collection policies of the Bank in its capacity as a Servicer and of the affiliates of the Bank acting as Servicers for corporate lending in effect as of the Issue Date.

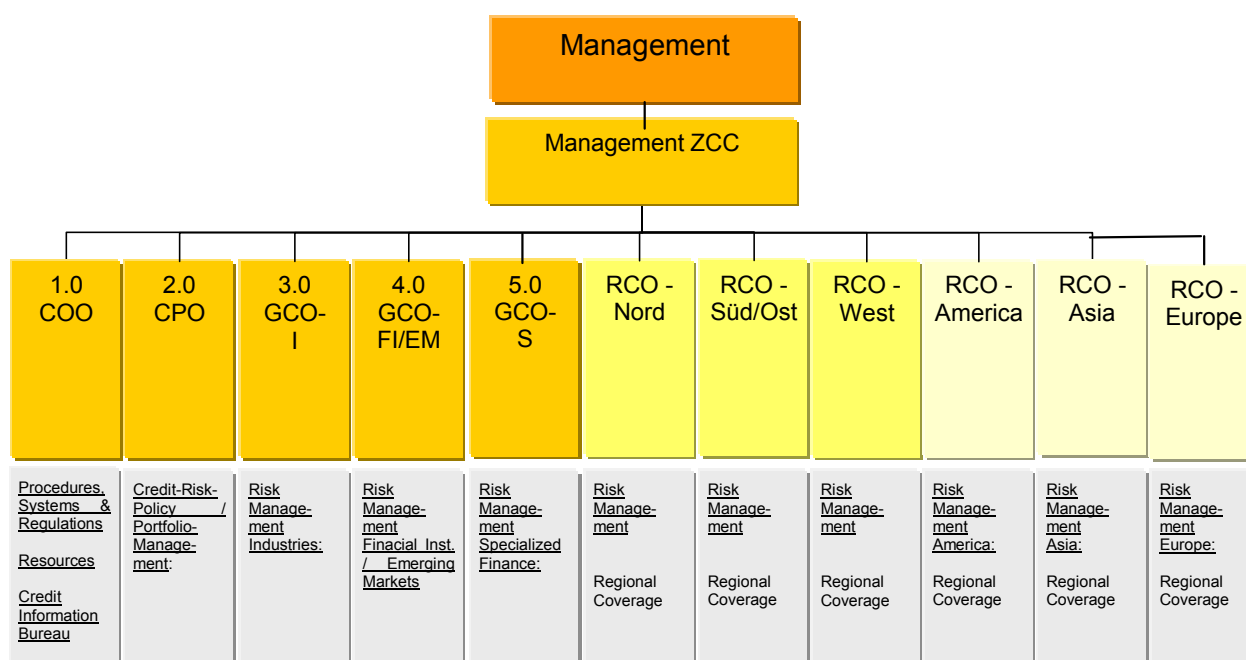
### Overview and Organisation

The credit policies and procedures described below are applied to corporate loans originated and held by Commerzbank AG. In general, the Bank defines a corporate loan as a loan advanced to a company with a turnover in excess of € 2,500,000.

Loan origination of corporate customer business is decentralised and executed at the level of the branch that is responsible for the relationship with the borrower.

- Credit risk in the corporate lending business is assessed, monitored and controlled by the central Global Credit Risk Management Corporates & Markets ("**ZCC**") of the Bank in industry-focused sector divisions. Credit exposure with a credit rating of  $\geq 5.0$  will be transferred to Global Intensive Care ("**ZIC**") for further treatment, whereas also clients with credit ratings of  $< 5.0$  but striking key-datas can be (credit rating  $\leq 3.8$ ) or have to be (credit rating  $4.0 - \leq 4.8$ ) presented to Intensive Care subject to defined regulations.

ZCC is structured as below. Beneath the regional offices, several local credit offices exist on the main branch level.



### Credit Process

#### *Credit Application*

Credit applications are prepared at branch level by relationship managers and credit officers in the local credit offices in accordance with the applicable credit policies. To ensure objectivity of the credit process within each branch, the credit department has a management and reporting structure

independent from the corporate customer department originating the loans. The credit application summarises the rationale of the submitted lending operation and evaluates its credit risk, including, *inter alia*:

- the intention for the proposed transaction;
- key figures from the review of the annual report, interim figures, forecasts etc;
- the collaterals;
- the key covenants (if applicable);
- the Commerzbank internal ratings assigned to the borrower (i.e. a PD rating and a credit rating);
- a summary of the relationship history;
- the expected profitability of the loan to the Bank and cross-selling opportunities; and
- a conclusion / recommendation.

All loan applications are assessed in the context of the total exposure of the Bank towards the borrower (under German banking regulation guidelines, all affiliated or otherwise related entities are considered as a single risk toward the borrower concerned).

### ***Lending Authorities***

Depending on the borrower's exposure size and its assigned internal rating, credit limit approval in corporate lending takes place at the level of the branch and its local credit office, the regional credit committee, the global credit office in the headquarters or in the head office credit committee. Lending authorities may then be comprised of:

- sub-credit committee corporates involving the chief credit officer, Global Credit Office – Industries / Specialised Finance, as well as heads of the corporate customer department *Zentrales Geschäftsfeld Corporate Banking* ("ZCB") and the capital markets department *Zentrales Geschäftsfeld Corporates & Markets* ("ZCM"). In addition, a regional board member (*Regionalvorstand*) or a member of the board of managing directors, as the case may be (alternatively) the head of *Zentrales Geschäftsfeld Corporates & Markets – Customer Relationship Management* ("ZCM-CRM") or the head of *Zentrales Geschäftsfeld Financial Institutions* ("ZFI") has to give his agreement;
- Commerzbank's credit committee including two members of the board of managing directors (one of whom being the chief risk officer), a regional board member and the chief credit officer;
- the board of managing directors;
- under special circumstances, the supervisory board of the Bank may review credit decisions.

### ***Internal Rating Systems***

To evaluate the financial and credit risk of borrowers and counterparties, the Bank has developed three fully integrated internal rating systems:

- (i) "**Rating Corporates Germany**" for German medium sized businesses with an annual turnover of EUR 2.5 million to EUR 750 million (the process-supporting tool "rating:navigator" is used to rate companies with small-sized exposures up to EUR 0.75 million),
- (ii) "**Rating Corporates Large Companies**" for multinationals and large companies bankwide with an annual turnover of over EUR 750 million, and
- (iii) "**Rating Corporates International**" for international medium-sized businesses with an annual

turnover up to EUR 750 million.

Each internal rating system generates two separate ratings for each borrower: a PD-Rating and a Credit Rating. Both ratings range on a scale from 1.0 to 5.8.

The "**PD-Rating**" is an assessment of the Probability of Default ("**PD**") of each borrower on the basis of:

- financial analysis of annual financial statements (statistic rating models),
- financial analysis of interim figures,
- assessment of timeliness of financial information,
- analysis of qualitative risks (market, management, value creation, notes analysis),
- early warning indicators,
- group integration, and
- manual override.

The "**Credit Rating**" incorporates an assessment of loss severity based on an analysis of:

- Loss given Default ("**LGD**") (credit imputation factor, value of collateral, capital recovery factor),
- Exposure at Default ("**EaD**") (utilisation and unutilised limits), and
- qualitative risks (maturity, covenants, liquidity of assets).

The Credit Rating constitutes the main driver of the lending authorities.

The Rating Corporates Germany rating system is based on:

- a rating model of 8 financial ratios and industry information (logistic regression) and assessment of substantial off balance sheet financing;
- assessment of the future performance of the borrower based on both interim and preliminary figures;
- assessment of timeliness of financial information (annual account, preliminary figures, interim figures);
- an analysis of qualitative risk factors (market, management, value creation, notes analysis) early warning indicators (e.g. payment history, customer behaviour, decrease in equity, strong regressive demand trend);
- the degree to which the borrower, if it is a subsidiary, is integrated into its parent group;
- manual overrides.

The structure of the Rating Corporates Large Companies rating system is nearly similar to Rating Corporates Germany. Differences include the financial analysis annual accounts (shadow rating model) and several qualitative factors.

The structure of the Rating Corporates International rating system is nearly similar to Rating Corporates Germany. Differences include the financial analysis of annual financial statements (rating models from Moody's RiskCalc<sup>TM</sup>) and several qualitative factors.

### ***Return on Equity (Profit Margin)***

The internal guidelines require the calculation of a profit margin as part of the decision process for any new and incremental corporate lending business as well as the extension of existing credit exposures.

The profit margin calculation is adjusted by standard risk costs ("SRCs") that quantify the Expected Loss ("EL") with respect to each borrower. EL is a function of the PD, the EaD and the LGD. The SRCs reflect, *inter alia*, the type of lending operation, the PD of the borrower (depending on the PD Rating, industry and turnover size), the collateral position and maturity period.

The efficiency of the credit process and rating system is further enhanced by an internal remuneration policy, which partly links the compensation of a relationship officer to SRCs and actual provisions.

### ***Collateral***

Depending on the overall credit risk assumed and the margin charged on a certain loan, Commerzbank demands collateral prior to making a loan or, in case the internal rating deteriorates, asks for additional collateral during the lifetime of a loan.

Any collateral requested by the Bank as security for one or more credit exposures is valued on the basis of the most realistic value (*Sicherheitenwert*). Such collateral value is defined as the conservatively estimated value, which is highly likely to be realised in case an exposure falls into default. The collateral value must be recorded in a system and kept up-to-date. This also requires that certain collateral for which there is a market price (e.g. securities) is valued based on its current market price. In all other cases, the collateral value is reviewed upon the extension of exposure (but in any event, annually) or in case of certain other events (e.g. market or borrower events).

## **Monitoring and Problem Loan Procedures**

### ***Monitoring Individual Credit Exposures***

The credit officer is responsible for the credit application and the subsequent credit reviews. All internal ratings are reviewed at least annually on receipt of the borrower's annual report and accounts are adjusted, if necessary. Internal credit ratings are reviewed at least every 12 months. The branch relationship manager is responsible for preparing regular call reports on the client and an annual overview of the credit relationship. The Global Intensive Care Office ("GIO") controls the review process.

### ***Monitoring Loan Payments***

All loans, including amortising, annuity and bullet structures, are recorded on an electronic system. This automated system initiates the payment process for interest and principal payments.

In case of a non-payment, the system automatically launches a reminder-process. Both the credit officer and the relationship manager receive copies of the reminder and are required to contact the borrower immediately. The system will send the client up to two further reminders at three-week intervals. After the expiration of the third reminder, the total outstanding amount on the loan is declared to be due. In case of late payments, the Financial Ratings and Credit Ratings are reviewed immediately and the exposure to the relevant borrower is assessed as to its PD.

### ***Problem Loan Management***

The Bank subdivides problem loans or loans for which provisions are to be made into three classes:

- Subperforming loans (*Prophylaxeengagements*) with an internal credit rating of 4.0 to 5.8;
- Performing problem loans (*Berichtskonten*) with an internal credit rating of 6.1 to 6.3;
- Non-performing loans (*Abwicklungskonten*) with an internal credit rating of 6.4 and 6.5; these accounts are considered unlikely to repay loans in whole or in part.

The workout process is carried out at branch level by the relevant main branch and the proper Local Intensive Care Office ("**LIO**") and by a workout team within GIO. The LIOs assume exclusive responsibility for exposures with an internal credit rating equal to or worse than 4.6. They also act as an advisory capacity for exposures with an internal rating better than 4.6. Exposures exceeding € 10 million are usually in the responsibility of GIO. However, the operational work continues to be carried out by the LIOs.

For any problem loan, the risk exposure of the Bank is evaluated. This includes a thorough analysis of any collateral in place. The loan will either be restructured and rated better than 4.8 or liquidated and rated 6.4 or 6.5. To recover on the loans, the steps taken by the LIO or GIO teams (sometimes with the support from external advisors) include all kinds of credit enhancements (such as additional collateral, repayment, setting up of collateral, credit pools, etc.), enforcement measures, seizure, distressed sale of collateral and application to initiate insolvency proceedings.

## THE ISSUER GUARANTEE

On October 7, 2008 the Bank and the Issuer will enter into a loss guarantee agreement (the "**Issuer Guarantee**") between the Issuer as protection seller and the Bank as protection buyer.

### Payments

Pursuant to the Issuer Guarantee, the Issuer will pay to the Bank on each Payment Date (or such other day on which Realised Losses are allocated to the Notes pursuant to the Terms and Conditions) the aggregate amount of all Realised Losses allocated to the Notes as of such date.

The Issuer will receive the funds necessary for the payments under the Issuer Guarantee by collecting the amounts under the Note Collateral.

The Bank will pay under the Issuer Guarantee, *inter alia*, the Guarantee Fee to the Issuer in arrear on each Payment Date. The "**Guarantee Fee**" will, pursuant to the Issuer Guarantee, be an amount calculated by the Bank as the sum of (i) the costs and expenses of the Issuer and (ii) the excess, if any, of (A) the aggregate Interest Amount payable by the Issuer on the Notes, over (B) the aggregate amount of the interest amounts due (for the avoidance of doubt, prior to any withholding or deduction on account of taxes) to the Issuer under the Note Collateral on the relevant Payment Date.

The Bank will also pay to the Issuer under the Issuer Guarantee on the relevant Payment Date an amount equal to the amount of any increase to be allocated to the Notes on any Payment Date as a result of allocation of Unjustified Loss Allocation pursuant to Section 9 (Unjustified Loss Allocation) of the Terms and Conditions.

### Cash Collateral

- (1) Pursuant to the Issuer Guarantee, in the event that
  - (i) the rating of the Bank falls below A-1 (short term) by S&P or P-1 (short term) or A1 (long term) by Moody's, or
  - (ii) the Bank ceases to be rated by S&P or Moody's (each of (i) and (ii), a "**Bank Rating Event**"),

the Bank shall, not later than 60 calendar days following such Bank Rating Event, deposit an amount into a separate account (the "**Cash Collateral Account**") with a bank (the "**Cash Collateral Account Bank**") having the Required Rating for the benefit of the Issuer sufficient to cover any one and one-half Guarantee Fees payable by the Bank (such amount, the "**Cash Collateral**"), *provided that* on each Payment Date, the Cash Collateral shall be reduced (by way of payment by the Issuer from the Cash Collateral Account to the Bank) or increased (by way of payment by the Bank to the Cash Collateral Account of the Issuer) in an amount commensurate with any reduction or increase in the Guarantee Fee expected to be payable on the following Payment Date. In the event of any default in payment of the Guarantee Fee, the Issuer shall be entitled to employ the Cash Collateral towards its payment obligation of any costs and expenses of the Issuer and/or towards any Interest Amount due or outstanding on the Notes.

- (2) Pursuant to the Issuer Guarantee, in the event that, subsequent to any Bank Rating Event, the ratings of the Bank are upgraded to A-1 (short term) by S&P and P-1 (short term) and A1 (long term) by Moody's, the obligation of the Bank to maintain the Cash Collateral shall terminate and the Issuer shall on the Payment Date following such upgrading pay to the Bank from the Cash Collateral Account an amount equal to the amount of the Cash Collateral on such



Payment Date.

### **Termination**

The Issuer Guarantee will terminate when none of the Notes are outstanding, unless terminated earlier in accordance with Early Termination Option or as a result of the occurrence of a Bank Event of Default or an Issuer Event of Default.

### **Early Termination Option**

Pursuant to the terms of the Issuer Guarantee, the Bank will have the right (but not the obligation) (each, an "**Early Termination Option**") to terminate the Issuer Guarantee for any of the reasons set out in clause (A) of the definition of "Issuer Guarantee Termination" under Section 12.1 (Early Redemption by the Issuer – Issuer Guarantee Termination) of the Terms and Conditions as of any Payment Date (the "**Optional Termination Date**") by giving the Issuer at least 12 Business Days prior notice.

The Bank may waive any of its rights to terminate the Issuer Guarantee by notice to the Issuer and upon delivery of such notice, the right of the Bank to terminate the Issuer Guarantee shall cease to exist to the extent specified in such notice and/or subject to limitations specified in such notice.

If the Bank exercises any of its Early Termination Options, the Issuer will pay to the Bank on the relevant Payment Date an amount equal to the Realised Losses determined in accordance with the Terms and Conditions, *provided that* the Issuer Guarantee shall remain outstanding if and as long as any Notes remain outstanding pursuant to Section 12.2 (Early Redemption by the Issuer – Deferred Redemption) of the Terms and Conditions.

The Issuer will receive the funds necessary for such payment from the amounts received under the Note Collateral.

### **Early Termination Events**

Pursuant to the terms of the Issuer Guarantee, the Issuer Guarantee will be subject to early termination upon the occurrence of an Issuer Event of Default or a Bank Event of Default.

Upon the occurrence of such early termination the Issuer will pay the Bank an amount equal to the amount by which the Class Principal Amount of such Class of Notes is reduced as a result of an allocation of Realised Losses to any Class of Notes determined in accordance with Section 12.3 (Early Redemption by the Issuer – Redemption in the case of Issuer Event of Default or Bank Event of Default) of the Terms and Conditions.

The Issuer Guarantee will not be subject to an early termination in circumstances relating to defaults under other transactions applicable to the Issuer or the Bank or mergers, consolidations or similar transactions of the Issuer or the Bank.

### **Redemption of the Notes**

Early termination of the Issuer Guarantee will result in redemption of the Notes as described under "THE NOTES – Early Redemption by the Issuer".

## THE COLLATERAL

### Senior Security Interest of the Bank

The security interest under the First Pledge Agreement as security for the obligations of the Issuer under the Issuer Guarantee will rank senior to any security interest in respect of the Note Collateral in accordance with the Trust Agreement for the benefit of the Noteholders. The rights of the Bank as pledgee under the First Pledge Agreement will have priority over the rights of the Trustee as pledgee under the Trust Agreement.

### Collateral and Loss Allocation

Notwithstanding the Collateral, the amount of principal of and, due to potential principal reductions, interest on the Notes may be reduced as a result of Realised Losses incurred with respect to the Reference Claims and only the obligations of the Issuer to pay any amount of principal and interest determined to be due to the Noteholders in accordance with the Terms and Conditions, which may be reduced by such Realised Losses, will have the benefit of the Collateral.

### NOTE COLLATERAL

On the Issue Date, the Issuer will pledge to the Bank the Note Collateral as security for its obligations under the Issuer Guarantee pursuant to the First Pledge Agreement.

Pursuant to the Trust Agreement the Issuer will pledge (*verpfänden*) to the Trustee all present and future rights and claims under the Cash Deposit Account Agreement and will deposit on the Issue Date an amount of EUR 119,000,000 onto the Cash Deposit Account. The Cash Deposit Account will be an account of the Issuer with Commerzbank AG, Neues Hochhaus, Kaiserstrasse 16, 60261 Frankfurt am Main, Germany (in such capacity and each successor cash deposit account bank, the "**Cash Deposit Account Bank**") pursuant to the Cash Deposit Account Agreement. The Cash Deposit Account Agreement and the Cash Deposit Account will be governed by the laws of the Federal Republic of Germany. Unless terminated earlier, the Cash Deposit Account Agreement will terminate upon the redemption in full of all Classes of Notes or upon the substitution in full of the Cash Collateral in accordance with the Terms and Conditions and the Trust Agreement.

### OTHER COLLATERAL

Pursuant to the terms of the Trust Agreement, the Issuer pledges (*verpfänden*) pursuant to §§ 1204, 1273 and 1279 of the German Civil Code (*Bürgerliches Gesetzbuch*) to the Trustee for the collateral purposes set out below the following claims and rights:

- (i) all its present and future claims and rights arising from:
  - (a) the Transaction Account Agreement, including all its present and future claims and rights under the Transaction Account,
  - (b) the agency agreement between the Issuer, the Trustee and the Principal Paying Agent dated October 2, 2008, as amended from time to time (the "**Agency Agreement**"),
  - (c) the subscription agreement for the Notes between the Issuer and Commerzbank Aktiengesellschaft (in such capacity together, the "**Lead Manager**") dated October 7, 2008, as amended from time to time (the "**Subscription Agreement**"),
  - (d) the Issuer Guarantee, and

- (e) the cash administration agreement between the Issuer, the Trustee and Citibank, N.A., London Branch, 21<sup>st</sup> Floor, Citigroup Centre, Canada Square, Canary Wharf, London E14 5LB, United Kingdom (in such capacity, the "**Cash Administrator**" which term shall also include any replacement Cash Administrator) dated October 7, 2008, as amended from time to time (the "**Cash Administration Agreement**"); and
- (ii) all its present and future claims and rights against the Trustee arising under the Trust Agreement.

The Trustee thereby accepts such pledges.

Such pledges serve to secure the Trustee Claim.

Pursuant to the Irish Security Agreement, the Issuer will charge and assign by way of security in favour of the Trustee all its present and future claims, right, title and interest in and to the Corporate Services Agreement as security for the Trustee Claim.

## ACCOUNTS AND CASH ADMINISTRATION

### Accounts

In connection with the Transaction the Issuer will maintain the following bank accounts:

- (i) the Transaction Account, which is an interest bearing account in EUR. The Issuer will open the Transaction Account with Citigroup Global Markets Deutschland AG & Co. KGaA, Frankfurter Welle, Reuterweg 16, 60323 Frankfurt am Main, Germany, as the initial Transaction Account Bank, before the Issue Date; and
- (ii) the Cash Deposit Account, which is an interest bearing account in EUR, with the Bank, as initial Cash Deposit Account Bank, on or before the Issue Date.

Pursuant to the Trust Agreement all of the Issuer's rights and claims in respect of the Accounts open as of the Issue Date and the related account agreements are pledged to the Trustee.

Pursuant to the Trust Agreement the Trustee has authorised the Issuer and the Cash Administrator on the Issuer's behalf to administer the Accounts. Such authorisation may be withdrawn by the Trustee upon the occurrence of a Foreclosure Event or if, in the professional judgement of the Trustee, such withdrawal is desirable or expedient to protect the interests of the Noteholders. See "TRUST AGREEMENT".

### **Consideration**

As consideration for the performance of its services and functions under the respective Account Agreements, the Issuer will pay each Account Bank a fee as separately agreed by each Account Bank with the Issuer with the consent of the Bank. Recourse of each Account Bank against the Issuer is limited.

### **Set-off Waiver**

Pursuant to the Account Agreements, the Account Banks will waive, for the benefit of the Trustee and the Issuer, any right to set-off and similar rights on the basis of which the Account Banks would be entitled to refuse payment to the Issuer or the Trustee, as relevant, and will agree to certain non-petition provisions in relation to the Issuer.

### Cash Administration

Pursuant to the Cash Administration Agreement, Citibank, N.A., London Branch, 21<sup>st</sup> Floor, Citigroup Centre, Canada Square, Canary Wharf, London E14 5LB, United Kingdom will act as the initial Cash Administrator for the Issuer. The Cash Administrator will provide professional services to the Issuer with respect to, *inter alia*, the management of the Accounts.

As consideration for the performance of its services and functions under the Cash Administration Agreement, the Issuer will pay the Cash Administrator a fee as separately agreed with the Issuer with the consent of the Bank. Recourse of the Cash Administrator against the Issuer is limited.

## CORPORATE SERVICES

Pursuant to the Corporate Services Agreement governed by Irish law, the Corporate Services Provider has agreed to provide book-keeping and other corporate and administrative services to the Issuer. The Issuer has a right to replace the Corporate Services Provider at any time upon notice to the Corporate Services Provider.

### **Description of the Corporate Services Provider**

Structured Finance Management (Ireland) Limited, a private limited liability company incorporated under the laws of Ireland, as corporate services provider to the Issuer in accordance with the terms of the Corporate Services Agreement through its offices at 25-26 Windsor Place, Lower Pembroke Street, Dublin 2, Ireland (registered no. 331206).

The principal activity of Structured Finance Management (Ireland) Limited is to provide corporate services, independent directors and management to companies and the provision of ancillary certain administrative and related services.

The information under "Description of the Corporate Services Provider" has been provided by the Corporate Services Provider, and neither the Issuer nor the Bank assumes any responsibility for its contents.

### **Consideration**

As consideration for the performance of its services and functions under the Corporate Services Agreement, the Issuer will pay the Corporate Services Provider a fee as separately agreed with the Issuer with the consent of the Bank. Recourse of the Corporate Services Provider against the Issuer is limited accordingly.

### *Termination of the Corporate Services Agreement*

The following is the text of the clause of the Corporate Services Agreement regarding termination and appointment of a substitute Corporate Services Provider:

"6.1 If any of the following events shall occur:

- (a) material default is made by SFMI in the performance or observance of any of its covenants and obligations under this Agreement, which in the opinion of the Trustee is materially prejudicial to the interests of the Secured Parties and which, in the case of a default that is in the sole opinion of the Trustee remediable, continues unremedied for a period of 30 days after written notice by the Trustee requiring the same to be remedied;
- (b) an order is made or an effective resolution passed for winding up SFMI;
- (c) SFMI ceases or threatens to cease to carry on its business or a substantial part of its business or stops payment or threatens to stop payment of any amounts due to its creditors generally or becomes unable to pay its debts as they fall due or otherwise becomes insolvent; or
- (d) (other than in the case of a reorganisation the terms of which have been approved by the Trustee and where SFMI is solvent) an order is made against SFMI under any applicable liquidation, insolvency, composition, reorganisation, examinership or other similar laws, or an administrative or other receiver, examiner or other similar official is appointed in relation to SFMI or in relation to the whole or any substantial part of the undertaking or

assets of SFMI or an encumbrancer shall take possession of the whole or any substantial part of the undertaking or assets of SFMI, and in any of the foregoing cases it shall not be discharged within 15 days; or if SFMI shall initiate or consent to judicial proceedings relating to itself under any applicable liquidation, insolvency, examinership, composition, reorganisation or other similar laws or shall make a conveyance or assignment for the benefit of its creditors generally;

then the Issuer (with the prior written consent of the Trustee) or the Trustee may by notice in writing to SFMI terminate the arrangements with SFMI hereunder, but without prejudice to any then existing rights and liabilities of the parties hereto. Each party shall forthwith notify the other parties in writing on the happening or possible occurrence of any such event.

- 6.2 The Issuer may at any time and without cause terminate SFMI from its office as corporate services provider by giving SFMI and the Trustee not less than 30 calendar days' prior notice.
- 6.3 Any termination of this Agreement under Clause 6.1 or Clause 6.2 shall be without liability or penalty on the part of the Issuer for so doing.
- 6.4 Such termination shall not take effect until a successor has been duly appointed in accordance with Clause 6.7 and previously approved in writing by the Trustee and notice of such appointment has been given to the Noteholders.
- 6.5 The Issuer shall pay to SFMI any amount due and outstanding in respect of the Administration Fees calculated up to the date of effectiveness of such termination but SFMI shall not be entitled to compensation in respect of such termination.
- 6.6 Forthwith after service of a notice of termination pursuant to Clause 6.1 or Clause 6.2, SFMI shall deliver to (and in the meantime hold on trust for and to the order of) the Issuer, as it shall direct, all books of account, papers, records, registers, correspondence and documents in its possession or under its control relating to the affairs of or belonging to the Issuer, any original contracts and/or the Transaction Documents, any monies then held by SFMI on behalf of the Issuer and any other assets of the Issuer and shall take such further action as the Issuer may reasonably direct.
- 6.7 The Issuer shall, at any time after the service of notice of termination pursuant to Clause 6.1 or Clause 6.2, appoint as corporate services provider any person to succeed SFMI or any successor corporate services provider previously appointed (a "**Substitute Corporate Services Provider**"), on the condition in each case that the Substitute Corporate Services Provider agrees with the Issuer to perform the duties and obligations of SFMI pursuant to and in accordance with the terms of this Agreement. Prior to the appointment of a Substitute Corporate Services Provider, the Issuer shall seek the consent of the Trustee to any such appointment and no such appointment shall be made without its consent. Following the appointment of a Substitute Corporate Services Provider, SFMI shall, notwithstanding that the date of termination of its appointment as specified in the relevant notice may not at such time have occurred, be discharged from performing further the obligations set out in this Agreement, without prejudice to the Issuer's or the Trustee's right to sue SFMI or make any other claim or take any other action with respect to a breach by SFMI of its obligations prior to the termination of its appointment as corporate services provider hereunder."

## THE ISSUER

The Issuer was incorporated in Ireland under registered number 459297 as a private company limited by shares under the Irish Companies Acts 1963 to 2006 under the name of CoSMO Finance 2008-1 Limited on June 27, 2008. The registered office of the Issuer is at 25-26 Windsor Place, Lower Pembroke Street, Dublin 2, Ireland. The Issuer is incorporated for an indefinite length of life and has been established as a special purpose vehicle for the purpose of issuing the Notes and acquiring the Note Collateral and performing all tasks ancillary thereto. The business of the Issuer is summarised below.

As of the Issue Date, the entire authorised share capital of the Issuer is EUR 3 divided into 3 ordinary shares of EUR 1.00 par value each, all of which are issued and fully paid up (the "**Shares**") and held by Medb Charitable Trust Limited (1 share), Badb Charitable Trust Limited (1 share) and Eurydice Charitable Trust Limited (1 share) (the "**Issuer Shareholders**") which are charitable trust companies incorporated under the laws of Ireland as companies limited by guarantee.

The Issuer is not related to the Bank (in any of its respective capacities).

### **Business of the Issuer**

The Issuer has been established as a special purpose vehicle for the purpose of issuing asset-backed securities. The objects and purposes of the Issuer are primarily the issue of securities. The principal objects of the Issuer are set forth in its Memorandum of Association and amongst other things are to carry on the business of entering into financial transactions including securitising, purchasing, acquiring, holding, collecting, discounting, financing, negotiating, managing, warehousing, selling, disposing of and otherwise trading or dealing directly or indirectly in real or personal property of whatsoever nature (including, without limitation, securities, instruments or obligations of any nature whatsoever, howsoever described and financial assets of whatsoever nature howsoever described and trade accounts, receivables and book debts of whatsoever nature howsoever described and foreign currencies) and any proceeds arising therefrom or in relation thereto and any participation or interest (whether legal or equitable) therein and any certificates of participation or interest (whether legal or equitable) therein and any agreements in connection therewith. These objects allow the Issuer to issue the Notes and use the proceeds to acquire the Note Collateral.

The Issuer has not engaged, since its incorporation, in any activities other than those incidental to its incorporation under the Irish Companies Acts 1963 to 2006, the authorisation and issue of the Notes, the acquisition of the Note Collateral, the execution of the Trust Agreement and of the other documents and matters referred to or contemplated in this Prospectus to which it is or will be a party and matters which are incidental or ancillary to the foregoing. The Issuer has only carried on activities since June 27, 2008, its date of incorporation.

The Issuer has not commenced operations since the date of its incorporation and no financial statements have been made up as at the date of this Prospectus.

The Issuer will covenant to observe certain restrictions on its activities which are detailed in the Trust Agreement. See "THE TRUST AGREEMENT". The principal assets of the Issuer will consist of the Note Collateral and, subject to Section 2.3 of the Terms and Conditions, the Note Collateral and the claims of the Issuer under the Issuer Guarantee against the Bank will be the only assets available to meet the claims of the Noteholders. Pursuant to the Issuer Guarantee, the Bank will pay the Issuer the Issuer Costs.

The Issuer has no employees.

The Issuer has entered into a number of contracts in connection with the issue of the Notes and in relation to the provision of administrative, legal, secretarial, audit and tax services to it. See

## "CORPORATE SERVICES "

### **Directors**

The directors of the Issuer, all of whom are non-executive and their respective addresses and other principal activities are:

<b>Name</b>	<b>Address</b>	<b>Description</b>
Frank Heffernan	c/o Structured Finance Management (Ireland) Limited 25 - 26 Windsor Place Lower Pembroke Street Dublin 2 Ireland	Director
Karen McCrave	c/o Structured Finance Management (Ireland) Limited 25 - 26 Windsor Place Lower Pembroke Street Dublin 2 Ireland	Director

Frank Heffernan, director of the Issuer, is a director of the Corporate Services Provider and Karen McCrave, director of the Issuer, is a director of the Corporate Services Provider.

The Articles of Association of the Issuer do not require that directors of the Issuer hold any shares in the Issuer in order to qualify to act as director. The Articles of Association of the Issuer provide that the remuneration of the directors shall from time to time be determined by the Issuer in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the Issuer or in connection with the business of the Issuer.

### **Corporate Services**

Pursuant to a corporate services agreement dated October 2, 2008 between the Issuer, the Corporate Services Provider and the Trustee (the "**Corporate Services Agreement**"), the Issuer has appointed Structured Finance Management (Ireland) Limited, 25-26 Windsor Place, Lower Pembroke Street, Dublin 2, Ireland as corporate services provider (the "**Corporate Services Provider**") to provide corporate and secretarial and administrative services to the Issuer, whose business address is 25-26 Windsor Place, Lower Pembroke Street, Dublin 2, Ireland.

### **Secretary**

The secretary of the Issuer is Structured Finance Management (Ireland) Limited whose business address is 25-26 Windsor Place, Lower Pembroke Street, Dublin 2, Ireland.

### **Indebtedness Statement**

Apart from the indebtedness under the Notes, at the date of this Prospectus, the Issuer has no borrowings or indebtedness in the nature of borrowings (including loan capital issued or created but unissued), term loans, liabilities under acceptances or acceptance credits, mortgages, charges or guarantees or other contingent liabilities.



## **Financial Statements**

Audited financial statements will be published on an annual basis. The Issuer will not prepare interim financial statements. The Issuer's accounting reference date in each year is December 31. The first set of audited financial statements will be in respect of the period up to December 31, 2008. Since the date of its incorporation no statutory financial statements have been prepared.

## **Auditors**

The auditors of the Issuer are PricewaterhouseCoopers, George's Quay, Dublin 2, Ireland. PricewaterhouseCoopers is a member of the Institute of Chartered Accountants of Ireland.

## **Expenses**

It is estimated that preliminary expenses and the expenses (including legal expenses, listing expenses and initial expenses of service providers) associated with the issue of the Notes will not exceed 1% of the initial aggregate principal amount of the Notes and will be payable by the Bank.

## **Litigation**

The Issuer has not been engaged in any governmental, litigation or arbitration proceedings which may have a significant effect on its financial position or profitability in the past 12 months, nor, as far as the Issuer is aware, are any such governmental, litigation or arbitration proceedings pending or threatened.

## **Material Change**

Except as may be set out in this Prospectus, there has been no material adverse change in the financial position of the Issuer since the date of its incorporation.

## **Material Contracts**

Apart from the Transaction Documents to which it is a party, the Issuer has not entered into any material contracts other than in the ordinary course of its business.

## THE BANK

### History and Development

Commerzbank Aktiengesellschaft is a stock corporation under German law and was established as Commerz- und Disconto-Bank in Hamburg in 1870. The Bank owes its present form to the re-merger of the post-war successor institutions of 1952 on July 1, 1958. The Bank's registered office is located in Frankfurt am Main and its head office is at Kaiserplatz, 60261 Frankfurt am Main, Federal Republic of Germany. The Bank is registered in the commercial register of the lower regional court (*Amtsgericht*) of Frankfurt am Main under the number HRB 32 000.

The shares of the Bank are listed on the stock exchanges of Frankfurt am Main, Berlin-Bremen, Düsseldorf, Hamburg, Hanover, Munich and Stuttgart. In addition, they are listed on the London Stock Exchange and on the SWX Swiss Exchange, Zurich.

### Business Overview

#### *Principal Activities*

Commerzbank is a major German private-sector bank. Its products and services for retail and corporate customers extend to all aspects of banking. The Bank is also active in specialised fields – partly covered by its subsidiaries – such as mortgage banking and real-estate business, leasing and asset management. Its services are concentrated on managing customers' accounts and handling payments transactions, loan, savings and investments plans, and also on securities transactions. Additional financial services are offered within the framework of the Bank's bancassurance strategy of cooperating with leading companies in finance-related sectors, including home loan savings schemes and insurance products. The Commerzbank Group's operating business has been categorized into six segments: Private and Business Customers, *Mittelstandsbank*, Central & Eastern Europe, Corporates & Markets, Commercial Real Estate as well as Public Finance and Treasury.

#### *Principal Markets*

Commerzbank's business activities are mainly concentrated on the German market, where as an integrated provider of financial services, it maintains a nationwide branch network for offering advice and selling products to all its groups of customers. In Private Banking, considered core markets are furthermore Austria, Luxembourg, Singapore and Switzerland and in corporate business Europe, USA and Asia.

### Management

As a German stock corporation, the Bank has a two-tier board system. The Board of Managing Directors is responsible for the management of the Bank and the representation of the Bank with respect to third parties, while the Supervisory Board appoints and removes the members of the Board of Managing Directors and supervises the activities of the Board of Managing Directors. The Board of Managing Directors currently consists of 8 members. Chairman of the Board of Managing Directors is Martin Blessing. The Supervisory Board currently consists of 20 members, ten of which are elected by the Bank's employees. Chairman of the Supervisory Board is Klaus-Peter Müller.

### Auditors

The auditors of the Bank are PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, Olof-Palme-Straße 35, 60439 Frankfurt am Main, Federal Republic of Germany.

PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft is a member of the Chamber of Chartered Accountants (*Wirtschaftsprüferkammer*).

## THE TRUSTEE

Pursuant to the Trust Agreement, the Trustee has agreed to serve in a fiduciary capacity to protect the interests of the Noteholders, the Junior Investor, if any, the Class E Swap Counterparty, the A2 Senior Guarantee Counterparty, if any, and the A1 Senior Guarantee Counterparty, if any. In particular, the Trustee will (i) confirm compliance and verify the determination and allocation of Realised Losses, (ii) act in respect of the Collateral, (iii) make required appointments of third party experts, and (iv) perform such other functions as are specified in the Trust Agreement. See "THE TRUST AGREEMENT".

### Description of the Trustee

The Trustee, Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft, is an independent accounting firm pursuant to the law regulating the profession of certified public accountants in Germany (*Wirtschaftsprüferordnung*) and applicable regulations thereunder. Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft is a limited liability company incorporated under the laws of the Federal Republic of Germany, with its registered office at Rosenheimer Platz 4, 81669 Munich, and is registered in the Munich Commercial Register under HRB 83442.

Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft and its affiliated companies are a group of German accounting, tax service and consulting firms with 18 branches and offices in Germany, about 3,600 employees, and a turnover for the period ending on June 30, 2007, of approximately €579 million.

Internationally, Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft is a member of Deloitte Touche Tohmatsu. Deloitte Touche Tohmatsu is an organisation (Swiss Verein) of member firms around the world, which provide services in four professional areas – audit, tax, consulting and financial advisory services – with more than 145,000 people in about 140 countries and with a 12 month turnover of 23.1 billion U.S. dollars worldwide for the period ending on May 31, 2007. Services are not provided by the Deloitte Touche Tohmatsu Verein and, for regulatory and other reasons, certain member firms do not provide services in all four professional areas. As a Swiss Verein (association), neither Deloitte Touche Tohmatsu nor any of its member firms has any liability for each other's acts or omissions. Each of the member firms is a separate and independent legal entity operating under the names "Deloitte", "Deloitte & Touche", "Deloitte Touche Tohmatsu", or other, related names.

The foregoing information regarding the Trustee has been provided by the Trustee, and the Issuer assumes no responsibility for its contents.

As compensation for its services under the Trust Agreement, the Issuer will pay the Trustee a fee as separately agreed between the Bank, the Issuer and the Trustee in a separate engagement letter.

## RATING

The Class A1+ Notes are expected to be rated AAA by S&P and Aaa by Moody's.

The Class A2+ Notes are expected to be rated AAA by S&P and Aaa by Moody's.

The Class B Notes are expected to be rated AA by S&P and Aa2 by Moody's.

The Class C Notes are expected to be rated A by S&P and A2 by Moody's.

The Class D Notes are expected to be rated BBB by S&P and Baa2 by Moody's.

The Class E Notes are expected to be rated BB by S&P and Ba2 by Moody's.

The Class F Notes are expected to be rated B by S&P and B2 by Moody's.

The Class G Notes will not be rated.

It is a condition of the issue of the Rated Notes that each Class of the Rated Notes receives the above indicated rating.

The rating of "AAA" is the highest rating that S&P assigns to long term debts and the rating of "Aaa" is the highest rating that Moody's assigns to long term debts.

The ratings assigned by Moody's to each Class of Rated Notes address the expected amount of Realised Losses in proportion to the initial Class Principal Amount of such Class of Rated Notes posed to investors by the Legal Maturity Date. Moody's ratings address only credit risks associated with the transaction. Other risks have not been addressed by Moody's, but may have a significant effect on yield to investors.

The rating of each Class of Rated Notes by S&P addresses the likelihood that the holders of such Class will receive all payments to which they are entitled, as described herein. The rating of each Class of Rated Notes by S&P also addresses the risk that a Realised Loss will be allocated to such Class pursuant to the Terms and Conditions as described herein. The rating of all Rating Agencies takes into consideration the characteristics of the Reference Claims and the current structural, legal, tax and Issuer-related aspects associated with the Rated Notes. However, the ratings assigned to the Rated Notes do not represent any assessment of the likelihood of principal prepayments. The ratings do not address the possibility that the Noteholders might suffer a lower than expected yield due to prepayments.

The ratings assigned to the Rated Notes should be evaluated independently from similar ratings on other types of securities. A security rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal by the Rating Agencies at any time.

## TAXATION IN GERMANY

### General

The following is a general discussion of certain German tax consequences of the acquisition and ownership of Notes. This discussion does not purport to be a comprehensive description of all tax considerations which may be relevant to a decision to purchase Notes. In particular, this discussion does not consider any specific facts or circumstances that may apply to a particular purchaser. This summary is based on the laws of Germany currently in force and as applied on the date of this Prospectus. These laws are subject to change, possibly with retroactive or retrospective effect.

PROSPECTIVE PURCHASERS OF NOTES ARE ADVISED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF NOTES AND THE RECEIPT OF INTEREST THEREON, INCLUDING THE EFFECT OF ANY STATE OR LOCAL TAXES, UNDER THE TAX LAWS OF GERMANY AND EACH COUNTRY OF WHICH THEY ARE RESIDENTS.

### GERMAN TAXATION OF THE NOTEHOLDERS

#### Tax Residents – Taxation of Interest

The taxation of interest payments on the Notes depends on whether the interest payments will be received prior to or after 1 January 2009.

- Taxation of interest received after 1 January 2009

Payments of interest on the Notes to Noteholders who are tax residents of Germany (i.e. persons whose residence, habitual abode, statutory seat, or place of effective management and control is located in Germany) are subject to German income tax (or, in case of corporate entities, to corporate income tax). Individuals, who derive interest income from private (i.e. non-business) investments, are, in principle, subject to income tax at a flat rate of 25% (*Abgeltungsteuer*) to the extent receiving such private investment income. Expenses related to such private investment income such as financing or administration costs actually incurred in relation with the acquisition or ownership of the Notes will not be deductible. Instead, the total investment income will be decreased by a lump sum deduction (*Sparer-Pauschbetrag*) of € 801 (€ 1,602 for married couples filing jointly). Where the Notes form part of a trade or business of the Noteholder the interest income does not qualify as private investment income and will be taxed at the applicable income tax rate of the Noteholder or at the uniform corporate income tax rate of 15%. If the Notes form part of the business property of a permanent establishment maintained by a resident Noteholder (individual or corporation) in Germany the relevant income will also be subject to trade tax. In each case where German income tax (or corporate income tax) arises, a solidarity surcharge (*Solidaritätszuschlag*) in an amount of 5.5% on such tax is levied in addition to such income tax.

If interest claims are disposed of separately (i.e. without the Notes), the proceeds from the disposition are likewise subject to income tax and possibly trade tax. The same applies to proceeds from the redemption of interest claims if the Note is disposed of separately.

If the Notes are held in a custodial account which the Noteholder maintains with a German branch of a German or non-German bank or financial services institution (the "**Disbursing Agent**") a 25% withholding tax on interest payments, plus solidarity surcharge, will be levied, resulting in a total tax charge of 26.375% of the gross interest payment. Otherwise, the Noteholder will have to include its income on the Notes in its tax return and the tax will be collected by way of assessment. In computing the tax to be withheld, the Disbursing Agent will have to take into account any private capital losses (including any Accrued Interest paid by the Noteholder during the same calendar year).

In general, no withholding tax will be levied if the Noteholder is an individual (i) whose Note neither

forms part of the property of a trade or business nor gives rise to income from the letting and leasing of property, and (ii) who filed a withholding exemption certificate (*Freistellungsauftrag*) with the Disbursing Agent but only to the extent the interest income derived from the Note together with other investment income does not exceed the maximum exemption amount shown on the withholding exemption certificate. Similarly, no withholding tax will be deducted if the holder of the Note has submitted to the Disbursing Agent a certificate of non-assessment (*Nichtveranlagungsbescheinigung*) issued by the relevant local tax office.

Payment of the withholding tax with respect to private investment income which are private (i.e. non-business) investments will satisfy the income tax liability of the Noteholder in respect of such investment income (*Abgeltungsteuer*). However, Noteholders may apply for a tax assessment on the basis of general rules applicable to them (in lieu of the flat tax – *Abgeltungsteuer*) if the resulting income tax burden (excluding the solidarity surcharge) is lower than 25%.

If, however, the Notes form part of a trade or business in which the Noteholder is engaged then the withholding tax will not satisfy the income tax and solidarity surcharge liability of the Noteholder but will be credited as prepayment against such liability. Amounts overwithheld will entitle the Noteholder to a refund, based on an assessment to tax.

#### - Taxation of interest prior to 1 January 2009

Payments of interest on the Notes before 1 January 2009 to persons who are tax residents of Germany will, as under the rules applying from 1 January 2009, be subject to personal or corporate income tax and possibly trade tax. The same applies to income derived from the separate disposition or redemption of interest claims. Also, upon the disposition of a Note carrying interest, a Noteholder will have to include in his taxable income any consideration invoiced separately for such portion of the interest of the current interest payment period which is attributable to the period up to the disposition of the Note ("**Accrued Interest**"). However, the flat taxation described in the preceding subsection ("Taxation of interest received after 1 January 2009"), including the disallowance of deductions of expenses actually incurred in relation with the acquisition or ownership of the Notes, does not apply with respect to private investment income received prior to 1 January 2009.

A 30% withholding tax on interest payments (*Zinsabschlag*), plus solidarity surcharge, will be levied, resulting in a total tax charge of 31.65% of the gross interest payment if a Disbursing Agent in Germany is involved in the payment process. In computing the tax to be withheld the Disbursing Agent may deduct from the basis of the withholding tax any Accrued Interest paid by the Noteholder to the Disbursing Agent during the same calendar year. Unlike under the rules applying as from 1 January 2009, payment of the withholding tax will not satisfy the income tax liability of the Noteholder in respect of such investment income. The Noteholder will have to include the respective interest income in its tax return. Withholding tax and solidarity surcharge thereon are credited as prepayments against the German income tax and the solidarity surcharge liability of the German tax resident. Amounts overwithheld will entitle the Noteholder to a refund, based on an assessment to tax.

#### **Tax Residents – Taxation of Capital Gains**

German taxation of capital gains from the disposition or redemption of the Notes depends on whether the Notes will be disposed of (or redeemed) either (i) prior to or (ii) after (or on) 1 January 2009 and, in the case of (ii), whether the Notes had been acquired before (or on) or after 31 December 2008.

#### - Taxation of capital gains as of 1 January 2009

Where the Noteholder is an individual (and provided that the Notes do not form part of a business property of the Noteholder) capital gains from the disposition or redemption of the Notes will be subject to income tax under the flat tax regime described above (see subsection "Taxation of interest received after 1 January 2009"), irrespective of any holding period, provided that the Notes have been

acquired after December 31, 2008. If the Notes had been acquired prior to (or on) the said date the tax regime described below ("Taxation of capital gains prior to 1 January 2009") will apply instead. Where the Notes qualify as a financial innovation (*Finanzinnovation*) (as defined in the below section headed "Taxation of capital gains prior to 1 January 2009") the said flat tax regime will apply to the relevant capital gains even if the Notes were acquired prior to January 1, 2009.

The tax will be levied by way of withholding at a rate of 25% (plus solidarity surcharge thereon) provided that the Notes are held in a custodial account which the Noteholder maintains with a Disbursing Agent. If the Notes have not been kept in a custodial account which the Noteholder maintains with a Disbursing Agent since their acquisition and the relevant acquisition data (*Anschaffungsdaten*) has not been evidenced to the satisfaction of the Disbursing Agent, the Disbursing Agent will generally have to withhold tax at the 25% rate (plus solidarity surcharge) on a lump-sum basis of 30% of the proceeds from the disposition, assignment or redemption of the Notes.

If the flat tax regime applies (see above) the withholding tax on the private capital gains will generally satisfy the recipient's tax liability with regard to such income but the Noteholder may apply for a tax assessment on the basis of applicable general rules if the resulting income tax burden is lower than 25%. Otherwise, the Noteholder will have to include the capital gains in its tax return and the income tax will be collected by way of assessment.

Where the Notes form part of a business property the withholding tax will not satisfy the income tax liability of the taxpayer, but will be credited as prepayment against his personal income or corporate income tax (at the applicable rates) and solidarity surcharge liability. Amounts overwithheld will entitle the taxpayer to a refund, based on an assessment to tax.

If the Notes form part of the business property of a permanent establishment maintained in Germany by the Noteholder, the capital gains from their disposition will also be subject to trade tax.

#### - Taxation of capital gains prior to 1 January 2009

Under the legislation applicable until December 31, 2008, capital gains from the disposition of the Notes that do not form part of a business property are generally only taxable to a German tax-resident individual if the notes are disposed of within one year after their acquisition.

However, if the issue price of the note is lower than the redemption amount (such as in the case of a zero coupon note or other discounted notes) or if the redemption amount is increased as compared with the issue price (as in the case of a note with accrued interest added), the note qualifies as a financial innovation (*Finanzinnovation*). In such cases, generally a yield to maturity of the note is calculated on the basis of the difference between the redemption amount and the issue price. The Noteholder will generally have to include in his taxable income in the year of the disposition or redemption of the note such portion of the proceeds from the disposition or of the redemption amount of the note which equals the yield to maturity of the note attributable to the period over which the Noteholder has held such note, minus interest, including Accrued Interest, already taken into account. If a predetermined yield to maturity of the notes cannot be determined, the difference between the proceeds from the disposition or redemption and the issue or purchase price of the note will be subject to income tax in the year of the disposition or redemption of the note (so called taxation based on market yield). If the Notes form part of a business property, as a general rule, in each fiscal year the yield to maturity of the Note to the extent attributable to such period must be taken into account as interest income and is subject to income tax and trade tax, as the case may be.

If the Notes qualify as financial innovations, as explained in the preceding paragraph, and have been kept in a custodial account which the Noteholder maintains with a Disbursing Agent since the time of issuance or acquisition, the Disbursing Agent will withhold tax at a rate of 30% (plus solidarity surcharge). If the Notes have been transferred into the custodial account of the Disbursing Agent only after such point in time, withholding tax at the aforementioned rate will be levied on a lump-sum basis of 30% of the proceeds from the disposition, assignment or redemption of the Notes. As with respect

to withholding tax imposed on interest payments, the tax withheld on capital gains (including deemed interest) will be credited as prepayment against the German income tax and solidarity surcharge liability of the resident taxpayer. Amounts overwithheld will entitle the Noteholder to a refund, based on an assessment to tax.

If the Notes form part of a business property of a permanent establishment maintained in Germany by the respective Noteholder (individual or corporation), capital gains from the disposition of the Notes are generally subject to German income tax and trade tax, as the case may be, even if the Notes will be disposed of only after lapse of the one-year holding period described above and do not qualify as financial innovations.

### **Non-residents**

Interest (including Accrued Interest) and capital gains are not subject to German taxation in the case of non-residents, i.e. persons having neither their residence nor their habitual abode nor legal domicile nor place of effective management in Germany, unless the Notes form part of the business property of a permanent establishment maintained in Germany. Interest may, however, also be subject to German income tax if it otherwise constitutes income taxable in Germany, such as income from the letting and leasing of certain German-situs property.

Non-residents of Germany are in general exempt from German withholding tax (and solidarity surcharge thereon) on interest and capital gains. However, where the interest and capital gains are subject to German taxation as set forth in the preceding paragraph and the Notes are held in a custodial account with a Disbursing Agent, withholding tax will be levied as explained above at "Tax Residents".

The Issuer is not obliged to compensate any tax amounts withheld; the withholding tax may be refunded based upon (and subject to the requirements of) an applicable tax treaty.

### **Inheritance and Gift Tax**

No inheritance or gift taxes with respect to any Note will arise under the laws of Germany, if, in the case of inheritance tax (*Erbschaftsteuer*), neither the decedent nor the beneficiary, or, in the case of gift tax (*Schenkungsteuer*), neither the donor nor the donee, is a resident of Germany and such Note is not attributable to a German trade or business for which a permanent establishment is maintained, or a permanent representative has been appointed, in Germany. Exceptions from this rule apply to certain German citizens who previously maintained a residence in Germany.

### **Other Taxes**

No stamp, issue, registration or similar taxes or duties will be payable in Germany in connection with the issuance, delivery or execution of the Notes. Currently, net assets tax (*Vermögensteuer*) is not levied in Germany.

### **Application of the German Investment Tax Act**

The Notes are credit linked to the performance of a replenishable reference pool of certain claims for the payment of principal and interest, arising inter alia from certain loans and credit facilities. Due to this fact and to further circumstances, it cannot be excluded that the German tax authorities view a German resident Noteholder as having acquired in substance units of a foreign investment fund, i.e. an asset that represents units in respect of a portfolio of assets within the meaning of the German Investment Act (*Investmentgesetz*; "InvA"), which portfolio consists of derivatives and/or money market instruments falling within the scope of the InvA and is invested according to the principle of risk diversification as required by §§ 1, 2nd sentence, 2(8) InvA.

There are good and valid reasons why the Notes should be outside the ambit of the InvA and the



German Investment Tax Act (*Investmentsteuergesetz*; "InvTA"), since the Issuer should not qualify as a foreign investment fund. According to the InvA, as amended on 28 December 2007, units issued by closed ended funds will generally no longer be treated as foreign investment units and will, therefore, fall outside the scope of the InvA and the InvTA, if certain prerequisites are met. According to the amended law, the Issuer could only be regarded as having issued foreign investment units if (i) the Noteholders were entitled to have their Notes redeemed and to demand payment of their share in the Issuer's assets or (ii) if the Noteholders have not been granted such right, the Issuer were subject to regulatory supervision as a mutual fund (*Aufsicht über Vermögen zur gemeinschaftlichen Kapitalanlage*) in the country in which it is located.

There are good and valid reasons why the Notes and the income derived therefrom should not come under the InvA (as amended): First, a Note is not redeemable at the option of the Noteholder and the Noteholders do not have the right to withdraw their funding. The fact that each Noteholder is – pursuant to Section 11.1 of the Terms and Conditions of the Notes – entitled to direct the Issuer to redeem the Notes held by it in case of a Default Event should not change this analysis. There is a reason to assume that the legislator only intended to cover situations where an investor is entitled to have a given instrument redeemed on a regular short-term basis. Extraordinary termination rights should not have to be taken into account in determining whether investors are "entitled to have their units redeemed". Second, the Issuer is not supervised by an "investment regulatory body" as set forth in the InvA (i.e. by a body supervising whether the Issuer meets certain requirements with respect to the composition and structure of the portfolio).

It is currently unclear whether the German tax authorities will exclusively look at the prerequisites described above at (i) and (ii) in order to determine whether units issued by foreign vehicles qualify as foreign investment units. If, contrary to expectations, the tax authorities qualified the Notes as foreign investment units within the InvA, the tax rules of the InvTA would apply. In such a case, a German Noteholder would, in principle, be taxed annually based on the distributions, interim earnings (*Zwischengewinn*) and, in addition, 70 % of the excess of the last over the first redemption price, market price or stock exchange price of the issued units for the calendar year; in any case a minimum of 6 % of the redemption price, market price or stock exchange price computed last for the calendar year is taken into account in accordance with § 6 InvTA.

### **EU Savings Tax Directive**

Under the EU Council Directive 2003/48/EC dated June 3, 2003 on the taxation of savings income in the form of interest payments (the "**EU Savings Tax Directive**"), which is applicable as from July 1, 2005, each EU Member State must require paying agents (within the meaning of such directive) established within its territory to provide to the competent authority of this state details of the payment of interest made to any individual resident in another EU Member State as the beneficial owner of the interest. The competent authority of the EU Member State of the paying agent (within the meaning of the EU Savings Tax Directive) is then required to communicate this information to the competent authority of the EU Member State of which the beneficial owner of the interest is a resident.

For a transitional period, Austria, Belgium and Luxembourg may opt instead to withhold tax from interest payments within the meaning of the EU Savings Tax Directive at a rate of 15% from July 1, 2005, of 20% from July 1, 2008 and of 35% from July 1, 2011.

In conformity with the prerequisites for the application of the EU Savings Tax Directive, a number of non-EU countries and territories, including Switzerland, have agreed to apply measures equivalent to those contained in such directive (a withholding system in the case of Switzerland).

In Germany, provisions for implementing the EU Savings Tax Directive have been enacted by legislative regulations of the Federal Government. These provisions apply as from July 1, 2005.

Noteholders who are individuals should note that the Issuer will not pay additional amounts in respect

of any withholding tax imposed as a result of the EU Savings Tax Directive.

### **No Gross-Up for Taxes**

If required by law, any payments under the Notes will only be made after deduction of any applicable withholding taxes and other deductions. The Issuer will not be required to pay additional amounts in respect of any withholding or other deduction for or on account of any present or future taxes, duties or charges of whatever nature. See Section 13 (Taxes) of the Terms and Conditions. The Issuer will redeem all of the Notes if the Bank in its sole discretion elects to have an Issuer Guarantee Termination occur as a result of, *inter alia*, such event. See Section 12 (Early Redemption by the Issuer) of the Terms and Conditions.

### **GERMAN TAXATION OF THE ISSUER**

Business profits derived by the Issuer would only be subject to German corporate income tax if the Issuer (i) had its place of effective management and control (*Geschäftsleitung*) or otherwise maintained a permanent establishment (*Betriebsstätte*) in Germany or (ii) appointed a permanent representative (*ständiger Vertreter*) for its business in Germany or (iii) otherwise received German-source income. In the case of (i) such business profits would be subject to German trade tax if the Issuer maintained a permanent establishment in Germany to the extent that the net income would be attributable to such permanent establishment.

For German tax purposes, the place of effective management and control of an issuer is defined as the place where the preponderance of managerial decisions which are relevant in conducting the day-to-day business of such issuer, is taken. The place of effective management and control constitutes a permanent establishment. A permanent establishment is otherwise constituted by any fixed place of business or facility which serves the purposes of the issuer and over which the issuer's management has effective power of disposal (*Verfügungsmacht*), such as an office or a branch.

A permanent representative of an issuer is defined as a person that habitually acts in an agency capacity and – subject to the instructions of such issuer in respect of business dealings of the issuer – in particular concludes contracts in the name of or acts as an intermediary with respect to contracts concluded by the issuer. This determination turns on an assessment of the relative economic significance of functions performed in Germany in comparison to functions performed elsewhere, either by the issuer itself or persons acting on its behalf.

In principle, as there are no significant activities in Germany attributable to the Issuer for tax purposes, the Issuer has been advised that it should neither maintain a permanent establishment (*Betriebsstätte*) in Germany nor should have been treated as having appointed a permanent representative (*ständiger Vertreter*). However, there is no certainty that the German tax authorities will agree with the aforesaid assessment. In particular, recent legislative changes may be viewed as an indication that vehicles such as the Issuer will be required to satisfy increased "substance" criteria in the future. As a consequence, the Issuer may be exposed to a higher risk that a tax authority considers it having its place of effective management and control, or otherwise maintaining a permanent establishment, or as having appointed a permanent representative, in Germany. The German tax authorities have however so far not made an official statement that would support such interpretation.

If the Issuer were treated as effectively managed and controlled or otherwise maintaining a permanent establishment in Germany or as having appointed a permanent representative for its business in Germany it would be subject to corporate income tax at a rate of 15% (plus 5.5% solidarity surcharge thereon). The Issuer's corporate income tax base would have to be determined on an accruals basis. Consequently, business expenditure incurred by the Issuer would be deductible when it arises so that the Issuer's taxable income would be expected to be close to zero or relatively low. In particular, interest payable on the Notes would generally be deductible for tax purposes.

However, according to the interest stripping provisions (*Zinsschranke*) introduced by the 2008 German Business Tax Reform Act, interest payment obligations exceeding 30% of the Issuer's earnings as determined for German tax purposes (adjusted by interest expense, interest income and certain depreciations) are not tax deductible. The regime, however, only applies if the net interest payments (interest payments minus interest income) exceed EUR 1,000,000 in the relevant business year. Interest payments that are not deductible can be carried-forward into future years and would generally be deductible in the subsequent business years, subject to limitations similar to those applicable in the current business year. Businesses that do not form part of a group of (consolidated) companies (*Konzern*) are exempt from the application of the interest stripping rules. Under the law, businesses form part of such group where their consolidation (for accounting purposes) with such other companies is permissible under the pertinent accounting standard. Although there is room to argue that the Issuer may be consolidated under IAS rules in connection with SIC 12, according to explanatory notes relating to the draft bill of the 2008 German Business Tax Reform Act and according to administrative guidance issued by the German Federal Ministry of Finance (*Bundesfinanzministerium*) on 4 July 2008, special purpose vehicles used in securitization transactions, such as the Issuer, are deemed to not form part of a group of companies (*Konzern*). Consequently, the Issuer should be exempt from the application of the interest stripping provisions.

However, Noteholders should note that the German tax authorities could also take a different view. If that were to be the case, a significant tax liability may be incurred by the Issuer since the net interest payments would exceed 30% of the Issuer's earnings as determined for corporate income tax purposes (adjusted by interest expense, interest income and certain depreciations).

With respect to the assessment of trade tax on the business profits derived by the Issuer, the Issuer has no business premises and office facilities at its disposal in Germany from which the business activities of the Issuer are conducted. The Issuer has been advised that the criteria of a permanent establishment located outside Germany are fulfilled and that, based upon arm's length standards, the indebtedness under the Notes and the interest payable thereon should be treated as attributable to such non-German permanent establishment. If, contrary to such expectations, the tax authorities were to take the position that the requirements of a non-German permanent establishment, to which such indebtedness and interest may be attributed, are not met and that the Issuer is instead effectively managed and controlled in Germany, trade tax will, in principle, arise with respect to taxable income of the Issuer attributable to its German permanent establishment. In that case, such business profits would constitute the tax basis for the computation of such trade tax liability. However, as a general rule for trade tax purposes, 25% of the interest payable by the Issuer (to the extent exceeding a threshold of EUR 100,000) will be "added-back" to the Issuer's trade tax base and, consequently, will not be deductible for trade tax purposes and will increase the trade tax burden of the Issuer. Nevertheless, the Issuer would, in principle, benefit from an exception to the general add-back rule, provided for by Section 19(3) of the German Trade Tax Application Directive (*Gewerbesteuerdurchführungsverordnung* or "**GewStDV**"). The exception applies where businesses exclusively (i) either acquire credit receivables (*Kredite*) or (ii) assume credit risks (*Kreditrisiken*) and refinance, in the case of (i) the acquisition of such receivables, and in the case of (ii), the provision of a security in respect of the assumed credit risks, by way of issuing notes. Also, the acquired credit receivables or the assumed credit risks must pertain to loans originated by credit institutions (*Kreditinstitute*) within the meaning of Sec. 1 of the German Banking Act (*Kreditwesengesetz* or "**KWG**"). Such credit risks would derive from the Reference Pool comprising certain loans, including fixed or floating rate, amortising, bullet or annuity loans, syndicated loans, participations and sub-participations, certain revolving credit facilities, including syndicated revolving credit facilities and certain guarantees, including syndicated guarantees originated in the Bank's business. Pursuant to the Transaction Documents, the Issuer would assume such credit risks and issue notes in order to refinance the provision of a security for the assumed credit risks so that the requirements of Sec. 19(3) No. 2 of the GewStDV would be satisfied and the Issuer would therefore benefit from the exemption provided by Sec. 19 Para 3 No. 2 GewStDV provided that the credit risks are solely relating to credit receivables in the sense of Sec. 1 of the KWG.

Based on Section 19(3) GewStDV, the Issuer's trade tax base would likely not be different from its

corporate income tax base. Noteholders should note that the limitations of the deductibility of interest payments mentioned above, i.e. the interest stripping rules introduced by the 2008 German Business Tax Reform Act, also apply for trade tax purposes.

Even if the German tax authorities were to agree with the above assessment and would not conclude that the Issuer maintains a permanent establishment or has appointed a permanent representative in Germany, the Issuer might otherwise receive German-source income, i.e., deriving from the (i) interest on the Cash Deposit Account and, in addition thereto, (ii) Guarantee Fees under the Issuer Guarantee. German-source income would, however, not result in a limited (*beschränkte*) German corporate income tax liability (and trade tax liability) in the case that the acquired collateral solely consists of a Cash Deposit Account. By contrast, if the Issuer were to exchange the Note Collateral by certain other collateral assets, the income received from such collateral assets may constitute income taxable in Germany. The Issuer has been advised that German-source income deriving from the Issuer Guarantee should not be subject to a limited (*beschränkte*) German corporate income tax liability (and trade tax liability). By contrast, other collateral assets giving rise to taxable German-source income may result in withholding tax being imposed. With regard to such income, the Issuer would have to meet additional requirements for the exemption from and the reimbursement of such German withholding tax under applicable double taxation treaties or under European Community law. Hence, tax withheld may not in such circumstance be recoverable by the Issuer or, as the case may be, the Issuer may not apply for a certificate of exemption (*Freistellungsbescheinigung im Steuerabzugsverfahren*) unless the Issuer were to meet certain substance requirements as specified by these rules.

## TAXATION OF THE NOTES IN IRELAND

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

*The summary is based upon Irish tax laws and the practice of the Irish Revenue Commissioners as in effect on the date of this Prospectus, which are subject to prospective or retroactive change. Prospective investors in the Notes should consult their own advisors as to the Irish or other tax consequences of the purchase, beneficial ownership and disposition of the Notes including, in particular, the effect of any state or local tax laws.*

### ***Income Tax***

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

A Note issued by the Issuer may be regarded as property situate in Ireland (and hence Irish source income) on the grounds that a bearer note is deemed to be situate where it is physically held or a debt is deemed to be situate where the debtor resides. However, the interest earned on such Notes is exempt from income tax if paid to a person who for the purposes of Section 198 of the Taxes Consolidation Act 1997 ("**TCA 1997**") is regarded as being a resident of a relevant territory. A relevant territory for this purpose is a Member State of the European Communities (other than Ireland) or not being such a Member State a territory with which Ireland has entered into a double tax treaty. Ireland has currently ratified a double tax treaty with each of Australia, Austria, Belgium, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Israel, Italy, Japan, Korea (Rep. of), Latvia, Lithuania, Luxembourg, Malaysia, Mexico, the Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, United Kingdom, U.S.A. and Zambia.

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

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

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

### ***Withholding Taxes***

In general, withholding tax at the rate of 20 per cent. must be deducted from interest payments made by an Irish company. However, Section 246 TCA 1997 ("**Section 246**") provides that this general obligation to withhold tax does not apply in respect of, *inter alia*, interest payments made by the

Issuer to a person, who by virtue of the law of the relevant territory, is resident for the purposes of tax in a relevant territory (see above for details). This exemption does not apply if the interest is paid to a company in connection with a trade or business which is carried on in Ireland by the company through a branch or agency.

Apart from Section 246, Section 64 TCA 1997 ("**Section 64**") provides for the payment of interest on a "**quoted Eurobond**" without deduction of tax in certain circumstances. A quoted Eurobond is defined in Section 64 as a security which:

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

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

- (a) the person by or through whom the payment is made is not in Ireland, or
- (b) the payment is made by or through a person in Ireland, and
  - (i) the quoted Eurobond is held in a recognised clearing system (Euroclear, Clearstream, Frankfurt and Clearstream, Luxembourg have been designated as recognised clearing systems); or
  - (ii) the person who is the beneficial owner of the quoted Eurobond and who is beneficially entitled to the interest is not resident in Ireland and has made an appropriate written declaration to this effect.

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

### ***Capital Gains Tax***

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

### ***Capital Acquisitions Tax***

If the Notes are comprised in a gift or inheritance taken from an Irish domiciled, resident or ordinarily resident disposer or if the donee/successor is resident or ordinarily resident in Ireland, or if any of the Notes are regarded as property situate in Ireland, the donee/successor may be liable to Irish capital acquisitions tax. As stated above, Notes issued by the Issuer may be regarded as property situate in Ireland. Accordingly, if such Notes are comprised in a gift or inheritance, the donee/successor may be liable to Irish capital acquisitions tax, even though the disposer may not be domiciled in Ireland.

### ***Stamp duty***

For as long as the Issuer is a qualifying company within the meaning of Section 110 TCA 1997, no Irish stamp duty will be payable on either the issue or transfer of the Notes, provided that the money raised by the issue of the Notes is used in the course of the Issuer's business.

## SUBSCRIPTION AND SALE

### Subscription of the Notes

Pursuant to the Subscription Agreement dated October 7, 2008, the Lead Manager has agreed, subject to certain conditions, to subscribe for the Notes. Conditions as referred to in the previous sentence are customary closing conditions as set out in the Subscription Agreement. There shall be no management and underwriting commission and selling concession payable to the Lead Manager by the Issuer.

In the Subscription Agreement, the Issuer has made certain representations and warranties in respect of its legal and financial matters. The Subscription Agreement entitles the Lead Manager to terminate its respective obligations thereunder in certain circumstances prior to payment of the purchase price of the Notes. The Issuer has agreed to indemnify the Lead Manager against certain liabilities in connection with the offer and sale of the Notes.

The Class A1+ Notes, the Class A2+ Notes, the Class B Notes, the Class C Notes, the Class D Notes, the Class E Notes, the Class F Notes and the Class G Notes, in whole or in part, will be placed with the Bank.

Other than as provided in the Selling Restrictions and under any applicable law, and subject to the Notes being transferable in book-entry form only, there are no restrictions with respect to the transferability of the Notes.

### Selling Restrictions

*United States of America and its Territories.* (1) The Notes have not been and will not be registered under the Securities Act and may not be offered, or sold within the United States or to, or for the account or benefit of, U.S. persons except in accordance with Regulation S under the Securities Act. The Lead Manager has represented and agreed that it has offered and sold the Notes, and will offer and sell the Notes (i) as part of its distribution at any time and (ii) otherwise until 40 days after the completion of the distribution of all the Notes only in accordance with Rule 903 of the Regulation S under the Securities Act. Neither the Lead Manager, its respective affiliates nor any persons acting on its behalf have engaged or will engage in any directed selling efforts with respect to the Notes, and they have complied and will comply with the offering restrictions requirements of Regulation S under the Securities Act. At or prior to confirmation of sale of Notes, the Lead Manager will have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases Notes from it during the restricted period a confirmation or notice to substantially the following effect:

"The Securities covered hereby have not been registered under the U.S. Securities Act of 1933, as amended (the "**Securities Act**") and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of their distribution at any time or (ii) otherwise until 40 days after the completion of the distribution of the Securities as determined and certified by the Lead Manager, except in either case in accordance with Regulation S under the Securities Act. Terms used above have the meaning given to them in Regulation S under the Securities Act."

Terms used in this clause have the meaning given to them by Regulation S under the Securities Act.

(2) Further, the Lead Manager has represented and agreed that:

- (a) except to the extent permitted under U.S. Treas. Reg. Section 1.163-5 (c)(2)(i)(D) (the "**TEFRA D Rules**"), (i) it has not offered or sold, and during the restricted period will not offer or sell, directly or indirectly, Notes in bearer form to a person who is within the United States or its possessions or to a United States person, and (ii) it has not delivered and will not deliver, directly or indirectly, within the United States or its possessions definitive Notes in bearer form

that are sold during the restricted period;

- (b) it has and throughout the restricted period will have in effect procedures reasonably designed to ensure that its employees or agents who are directly engaged in selling Notes in bearer form are aware that such Notes may not be offered or sold during the restricted period to a person who is within the United States or its possessions or to a United States person, except as permitted by the TEFRA D Rules;
- (c) if it was considered a United States person, that it is acquiring the Notes for purposes of resale in connection with their original issuance and agrees that if it retains Notes in bearer form for its own account, it will only do so in accordance with the requirements of U.S. Treas. Reg. Section 1.63-5 (c)(2)(i)(D)(6); and
- (d) with respect to each affiliate that acquires from it Notes in bearer form for the purpose of offering or selling such Notes during the restricted period that it will either (i) repeat and confirm the representations and agreements contained in sub-clauses (a), (b) and (c); or (ii) obtain from such affiliate for the benefit of the Issuer the representations and agreements contained in sub-clauses (a), (b) and (c).

Terms used in this clause (2) have the meanings given to them by the U.S. Internal Revenue Code and regulations thereunder, including the TEFRA D Rules.

*Bahrain.* The Lead Manager has represented and agreed that the purchase of the Notes is by invitation only and no offer will be made in Bahrain to the public to purchase the same. This Prospectus is intended to be read only by the addressee.

*Hong Kong.* The Lead Manager has represented and agreed that:

- (a) it has not offered or sold and will not offer or sell in Hong Kong, by means of any document, any Notes other than (i) to persons whose ordinary business it is to buy or sell shares or debentures (whether as principal or agent); (ii) to "professional investors" as defined in the Securities and Future Ordinance (Cap. 571) of Hong Kong and any rules made under that Ordinance; or (iii) 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
- (b) 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 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 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 Lead Manager has confirmed and agreed that (i) it has not offered or sold, and will not offer or sell, the Notes to the public within Ireland except in circumstances which do not require the prior publication of a prospectus pursuant to Article 3(2) of Directive 2003/71/EC; (ii) it has not and will not do anything in Ireland in connection with the Notes that might constitute a breach of Section 9(1), 23(1), 23(6) or 23(7) of the Investment Intermediaries Act 1995; and (iii) anything done in Ireland with respect to the Notes will only be done in conformity with the provisions of the Irish Market Abuse Directive (2003/6/EC) Regulations 2005.

*Italy.* The offering of the Notes has not been cleared by CONSOB (the Italian Securities Exchange Commission) pursuant to Italian securities legislation and, accordingly, the Lead Manager has represented and agreed that no Notes may be offered, sold or delivered, nor may copies of the



Prospectus or of any other document relating to the Notes be distributed in the Republic of Italy, except:

- (A) to professional investors (*operatori qualificati*), as defined in Article 31, second paragraph, of CONSOB Regulation No. 11522 of 1 July 1998, as amended; or
- (B) in circumstances which are exempted from the rules on solicitation of investments pursuant to Article 100 of Legislative Decree No. 58 of 24 February 1998 (the "**Financial Services Act**") and Article 33, first paragraph, of CONSOB Regulation No. 11971 of 14 May 1999, as amended.

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

- (i) 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 and Legislative Decree No. 385 of 1 September 1993 (the "**Banking Act**"), as amended;
- (ii) in compliance with Article 129 of the Banking Act and the implementing guidelines of the Bank of Italy pursuant to which the issue or the offer of securities in the Republic of Italy may need to be preceded and followed by an appropriate notice to be filed with the Bank of Italy depending, *inter alia*, on the aggregate value of the securities issued or offered in the Republic of Italy and their characteristics; and
- (iii) in compliance with any other applicable laws and regulations.

*Japan.* The Lead Manager has acknowledged that it is aware that the Notes have not been and will not be registered under the Securities and Exchange Law of Japan (Law No. 25 of 1948) (as amended) (the "**Securities and Exchange Law**") and are subject to the Special Taxation Measures Law of Japan (Law No. 26 of 1957) (as amended) (the "**Special Taxation Measures Law**"). The Lead Manager has represented and agreed that it has not, directly or indirectly, offered or sold and will not, directly or indirectly, offer or sell Notes in Japan or to any person resident in Japan for Japanese securities law purposes (including any corporation or other entity organised under the laws of Japan), except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Securities and Exchange Law of Japan.

*Kingdom of Saudi Arabia.* By receiving this Prospectus, the person or entity to whom it has been issued understands, acknowledges and agrees that this Prospectus has not been approved by the Saudi Arabian Monetary Agency, the Saudi Arabian Ministry of Commerce and Industry or any other authority in Saudi Arabia, nor has the Lead Manager received authorisation or licensing from the Saudi Arabian Monetary Agency, the Saudi Arabian Ministry of Commerce and Industry or any other authority in Saudi Arabia to market or sell the notes within Saudi Arabia. Therefore, the Lead Manager has represented and agreed that the Notes will not be marketed or sold in Saudi Arabia and no services relating to the offering, including the receipt of applications or this Prospectus, or both, will be rendered within Saudi Arabia by the Lead Manager or persons representing the Lead Manager.

*Kuwait.* This Prospectus is being provided upon the request of the recipient and for his convenience. Receipt of this Prospectus does not constitute an offer to sell the securities referred to herein in Kuwait. The Lead Manager has represented and agreed that (i) no private or public offering of the Notes is being made in Kuwait, and no agreement relating to the sale of the Notes will be concluded in Kuwait, (ii) no mass-media means of contact are being used to market the Notes, and (iii) the Notes are being offered for sale only to qualified institutional investors and sophisticated, high-net-worth individuals. Neither the Notes nor the private offering have been licensed by the Ministry of Commerce or any other relevant Kuwaiti Government Agency. Neither the Arranger nor any other party involved in this offering is licensed in the state of Kuwait.

*People's Republic of China.* The Lead Manager has represented and agreed that no securities shall be offered or sold in the People's Republic of China (excluding Hong Kong and Macau, the "PRC") directly or indirectly. This Prospectus does not constitute an offer to sell or the solicitation of an offer to buy any securities in the PRC to any person to whom it is unlawful to make the offer or solicitation in the PRC.

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

*Republic of Korea.* The Notes have not been and will not be registered under the Securities and Exchange Law of Korea. The Lead Manager represents and agrees that it will not directly or indirectly, sell, offer or deliver any notes in Korea or to, or for the account or benefit of, any resident of Korea, or to others for re-offering or re-sale directly or indirectly in Korea or to, or for the account or benefit of, any resident of Korea except as otherwise permitted under the Securities and Exchange law, the Foreign Exchange Transaction Law and other relevant laws of Korea.

*Taiwan.* The Lead Manager has represented and agreed that the Notes may not be offered, sold or delivered, directly or indirectly, in Taiwan or to any resident of Taiwan or to others for reoffering or resale directly or indirectly in Taiwan or to any resident of Taiwan, except as otherwise permitted by applicable laws and regulations in Taiwan.

*United Arab Emirates.* The Lead Manager has represented and agreed that the Notes have not been and will not be publicly offered, sold, promoted or advertised in the United Arab Emirates other than in compliance with laws applicable in the United Arab Emirates governing the issue, offering and sale of notes. Furthermore, the information contained in this Prospectus does not constitute a public offer of securities in the United Arab Emirates in accordance with the Commercial Companies Law (Federal Law No. 8 of 1984 (as amended) or otherwise, and is not intended to be a public offer and, the information contained in the Prospectus is not intended to lead to the conclusion of any contract of whatsoever nature within the territory of the United Arab Emirates. Furthermore, this Prospectus has not been approved by the UAE Central Bank and the Lead Manager has not received any authorisation from the UAE Central Bank to market or sell the Notes within the United Arab Emirates. No services relating to the Prospectus may be rendered in the United Arab Emirates.

The Lead Manager has represented and agreed that the Notes have not been and will not be offered, sold, promoted or advertised in the Dubai International Financial Centre ("**DIFC**") other than in compliance with laws applicable in the DIFC governing the issue, offering and sale of notes.

*United Kingdom.* The Lead Manager has represented and agreed that:

- (a) (i) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (ii) it has not offered or sold and will not offer or sell the Notes other than to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the Notes would otherwise constitute a contravention of Section 19 of the FSMA by the Issuer;
- (b) it has only communicated or caused to be communicated and will only communicate or cause to

be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the Notes in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer;

- (c) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Notes in, from or otherwise involving the United Kingdom.

As used herein, "**United Kingdom**" means the United Kingdom of Great Britain and Northern Ireland.

*General.* The Lead Manager agrees that it will not offer, sell or deliver any of the Notes, directly or indirectly, or distribute this Prospectus or any other offering material relating to the Notes, in or from any jurisdiction except under circumstances that will to its best knowledge and belief result in compliance with the applicable laws and regulations thereof.

## **USE OF PROCEEDS**

The net proceeds from the issue of the Notes will amount to approximately EUR 119,000,000. The Issuer will deposit the net proceeds from the issue of the Notes onto the Cash Deposit Account on the Issue Date.

## GENERAL INFORMATION

### **Authorisation**

The issue of the Notes was authorised by a resolution of the board of directors of the Issuer on October 1, 2008.

### **Litigation**

The Issuer is not and has not been since its incorporation engaged in any governmental, litigation or arbitration proceedings which may have or have had during such period a significant effect on its respective financial position and, as far as the Issuer is aware, no such governmental, litigation or arbitration proceedings are pending or threatened.

### **Material Change**

Save as disclosed in this Prospectus, there has been no material adverse change in the financial position of the Issuer since its incorporation.

### **Payment Information**

For as long as any of the Notes are listed on the regulated market of the Irish Stock Exchange, the Issuer will notify the Irish Stock Exchange of the Interest Amounts, Interest Accrual Periods and the Interest Rates and the payments of principal on each Class of Notes, in each case, without delay after their determination pursuant to the Terms and Conditions.

The Notes have been accepted for clearance through Euroclear and Clearstream, Luxembourg.

All notices to the Noteholders regarding the Notes shall either (A) be delivered to Euroclear and Clearstream, Luxembourg for communication by it to the Noteholders or (B) be made available for a period of not less than 30 calendar days on a web site, the address of which has been notified to the Noteholders in the manner set out in (A) on or before the date on which the relevant notice is given. For as long as any of the Notes are listed on the regulated market of the Irish Stock Exchange and to the extent the rules of that stock exchange so require, notices shall be forwarded to the Companies Announcement Office of the Irish Stock Exchange no later than the date of dispatch of such notice to the Noteholders.

### **Irish Listing**

The Prospectus has been approved by the Irish Financial Services Regulatory Authority, as competent authority under Directive 2003/71/EC. The Irish Financial Services Regulatory Authority only approves this Prospectus as meeting the requirements imposed under Irish and EU law pursuant to Directive 2003/71/EC. Application has been made to the Irish Stock Exchange for the Class A1+ Notes, Class A2+ Notes, Class B Notes, Class C Notes, Class D Notes, Class E Notes, Class F Notes and Class G Notes to be admitted to the Official List and trading on its regulated market. The Issuer has appointed A&L Listing Limited, 25-28 North Wall Quay, IFSC, Dublin 1, Ireland, as the initial listing agent for the Irish Stock Exchange in Dublin.

Prior to such listing of the Class A1+ Notes, Class A2+ Notes, Class B Notes, Class C Notes, Class D Notes, Class E Notes, Class F Notes and Class G Notes, the Memorandum and Articles of Association of the Issuer and legal notices relating to the issue of the Notes will be lodged registered office of the Issuer and the head office of the Principal Paying Agent, where such documents may be inspected and copies thereof obtained, free of charge, upon request.

## Miscellaneous

No statutory or non-statutory accounts in respect of any financial year of the Issuer have been prepared other than as contained in this Prospectus. The Issuer will not publish interim accounts. The financial year end in respect of the Issuer is December 31. The Issuer will produce non-consolidated audited financial statements in respect of each financial year and will not produce consolidated audited financial statements.

## Clearing Codes

Class A1+  
ISIN XS0375835880  
Common Code 037583588  
WKN A0TXZL

Class D  
ISIN XS0375839791  
Common Code 037583979  
WKN A0TXZQ

Class A2+  
ISIN XS0375836185  
Common Code 037583618  
WKN A0TXZM

Class E  
ISIN XS0375841185  
Common Code 037584118  
WKN A0TXZR

Class B  
ISIN XS0375838553  
Common Code 037583855  
WKN A0TXZN

Class F  
ISIN XS0375841938  
Common Code 037584193  
WKN A0TXZS

Class C  
ISIN XS0375839106  
Common Code 037583910  
WKN A0TXZP

Class G  
ISIN XS0375842076  
Common Code 037584207  
WKN A0TXZT

## Publication of Documents

This Prospectus will be made available to the public by publication in the electronic form on the website of the Irish Financial Services Regulatory Authority ([www.ifsra.ie](http://www.ifsra.ie)).

## Availability of Documents

Copies of the following documents may be obtained in physical form during customary business hours on any working day from the date hereof (or the date of publication of such document, as relevant) as long as this Prospectus is valid and as long as any of the Notes remain outstanding at the registered office of the Issuer and the head office of the Principal Paying Agent:

- (i) the Memorandum and Articles of Association of the Issuer;
- (ii) the resolution of the board of directors of the Issuer approving the issue of the Notes and the Transaction;
- (iii) this Prospectus, the Trust Agreement dated October 7, 2008, the Corporate Services Agreement dated October 2, 2008, the Cash Administration Agreement dated October 7, 2008, the Agency Agreement dated October 2, 2008, the Cash Deposit Account Agreement dated October 7, 2008, the Transaction Account Agreement dated October 7, 2008, the Subscription Agreement dated October 7, 2008, the First Pledge Agreement dated October 7, 2008, and the Issuer Guarantee dated October 7, 2008;
- (iv) all future annual financial statements of the Issuer, the annual financial statements

(consolidated) of the Bank for the years ending 2005, 2006 and 2007 and all future annual financial statements (consolidated) of the Bank; the Issuer does not publish audited interim financial statements; and

- (v) the Investor Notifications for Noteholders and all other notices given to the Noteholders pursuant to the Terms and Conditions (see "THE NOTES – Notifications").

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**ISSUER**

CoSMO Finance 2008-1 Limited  
25-26 Windsor Place  
Lower Pembroke Street  
Dublin 2  
Ireland

**THE BANK**

Commerzbank Aktiengesellschaft  
Neues Hochhaus  
Kaiserstrasse 16  
60261 Frankfurt am Main  
Germany

**LEAD MANAGER**

Commerzbank Aktiengesellschaft  
60 Gracechurch Street  
London EC3V 0HR  
United Kingdom

**TRUSTEE**

Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft  
Schwannstrasse 6  
40476 Düsseldorf  
Germany

**PRINCIPAL PAYING AGENT**

Citibank, N.A., London Branch  
21<sup>st</sup> Floor, Citigroup Centre  
Canada Square  
Canary Wharf  
London E14 5LB  
United Kingdom

**THE IRISH LISTING AGENT**

A&L Listing Limited  
25-28 North Wall Quay  
IFSC  
Dublin 1  
Ireland

**CORPORATE SERVICES PROVIDER  
TO THE ISSUER**

Structured Finance Management (Ireland)  
Limited  
25-26 Windsor Place  
Lower Pembroke Street  
Dublin 2  
Ireland

**AUDITORS OF THE ISSUER**

PricewaterhouseCoopers  
George's Quay  
Dublin 2  
Ireland