

## TERMS AND CONDITIONS OF COLLATERAL NOTES IN BEARER FORM

*These are the final terms (the "Final Terms") of an issue of Collateral Notes which term, where applicable, shall include Pfandbriefe under the Debt Issuance Programme of Eurohypo Aktiengesellschaft (the "Programme"). Full information on the Collateral Note Issuer and the offer of the Collateral Notes is only available on the basis of the combination of the Debt Issuance Programme Prospectus pertaining to the Programme dated 28 June 2006 as supplemented from time to time (the "Prospectus") and these Final Terms. The Prospectus is available for viewing in electronic form at the website of the Luxembourg Stock Exchange ([www.bourse.lu](http://www.bourse.lu)) and at the website of Eurohypo Aktiengesellschaft ([www.eurohypo.com/basedocuments](http://www.eurohypo.com/basedocuments)) and copies may be obtained from Helfmann-Park 5, 65760 Eschborn, Germany.*

*All provisions in the Terms and Conditions of the Notes set forth in the Prospectus corresponding to items in these Final Terms shall be substituted by the provisions of these Final Terms.*

### 1 CURRENCY; DENOMINATION; FORM; CERTAIN DEFINITIONS

#### 1.1 Currency, Denomination

Eurohypo Aktiengesellschaft, Helfmann-Park 5, 65760 Eschborn, Germany (the "**Collateral Note Issuer**") has issued the following securities (collectively referred to as the "**Collateral Notes**" and each a "**Collateral Note**").

- (i) EUR 500,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG, Issue 2328, WKN EH0EEQ, ISIN DE000EH0EEQ6 (the "**Series A+ Collateral Notes**"), divided into 10 *Pfandbriefe* each having an initial principal amount of EUR 50,000;
- (ii) EUR 58,500,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG, Issue 2329, WKN EH0EER, ISIN DE000EH0EER4 (the "**Series A Collateral Notes**"), divided into 585 *Pfandbriefe* each having an initial principal amount of EUR 100,000;
- (iii) EUR 72,000,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG, Issue 2330, WKN EH0EES, ISIN DE000EH0EES2 (the "**Series B Collateral Notes**"), divided into 720 *Pfandbriefe* each having an initial principal amount of EUR 100,000;
- (iv) EUR 45,000,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG, Issue 2331, WKN EH0EET, ISIN DE000EH0EET0 (the "**Series C Collateral Notes**"), divided into 450 *Pfandbriefe* each having an initial principal amount of EUR 100,000;
- (v) EUR 40,500,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG, Issue 2332, WKN EH0EEU, ISIN DE000EH0EEU8 (the "**Series D Collateral Notes**"), divided into 405 *Pfandbriefe* each having an initial principal amount of EUR 100,000; and
- (vi) EUR 65,700,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG, Issue 2333, WKN EH0EEV, ISIN DE000EH0EEV6 (the "**Series E Collateral Notes**"), divided into 657 *Pfandbriefe* each having an initial principal amount of EUR 100,000.

Each of the Series of Collateral under (i) through (vi) above is referred to as a "**Series**".

## 1.2 Form

The Collateral Notes are being issued in bearer form.

## 1.3 Global Notes

- (a) Each Series of the Collateral Notes is initially represented by a temporary global note (the "**Temporary Global Note**") without interest coupons. The Temporary Global Note will be exchangeable for a permanent global note (the "**Permanent Global Note**") without interest coupons. The Temporary Global Note and the Permanent Global Note shall each be signed manually by two authorised signatories of the Collateral Note Issuer and, in the case of the Temporary Global Note and the Permanent Global Note representing any Series of *Pfandbriefe*, in addition to the aforementioned, by the independent trustee appointed by the Federal Financial Services Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*). Definitive Collateral Notes and interest coupons will not be issued.
- (b) The Temporary Global Note shall be exchanged for the Permanent Global Note on a date (the "**Exchange Date**") not later than 180 days after the date of issue of the Temporary Global Note. The Exchange Date for such exchange will not be earlier than 40 days after the date of issue of the Temporary Global Note. Such exchange shall only be made upon delivery of certifications to the effect that the beneficial owner or owners of the Collateral Notes represented by the Temporary Global Note is or are not a U.S. person (other than certain financial institutions or certain persons holding Collateral Notes through such financial institutions). The certifications shall be in compliance with the respective United States Treasury Regulations as applicable from time to time. Payment of interest on Notes represented by a Temporary Global Note will be made only after delivery of such certifications. A separate certification shall be required in respect of each such payment of interest. Any such certification received on or after the 40th day after the date of issue of the Temporary Global Note will be treated as a request to exchange such Temporary Global Note pursuant to this subparagraph (b) of this Section 1.3. Any securities delivered in exchange for the Temporary Global Note shall be delivered only outside of the United States. For purposes of this subparagraph (b), "**United States**" means 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 Northern Mariana Islands).

## 1.4 Clearing System.

The Temporary Global Note will be kept in custody by or on behalf of the Clearing System until exchange in full in accordance with Section 1.3 above. The Permanent Global Note will be kept in custody by or on behalf of the Clearing System until all obligations of the Collateral Note Issuer under the Collateral Notes have been satisfied. "**Clearing System**" means Clearstream Banking AG, Frankfurt am Main and any successor in such capacity.

## 1.5 Holder of Collateral Notes

"**Holder**" means any holder of a proportionate co-ownership or other beneficial interest or right in the Collateral Notes.

## 1.6 Certain Definitions

Any capitalised terms and expressions used in these terms and conditions of these Collateral Notes and not defined herein shall have the meaning given to them in the Terms and Conditions of the Class A+, Class A, Class B, Class C, Class D and Class E Floating Rate

Credit Linked Notes (the "**Notes**") of CoCo Finance 2006-1 PLC (the "**Terms and Conditions**") a copy of which is attached hereto as Annex I.

## 2. STATUS

The obligations under the Eurohypo Pfandbriefe constitute unsubordinated obligations of the Collateral Note Issuer ranking *pari passu* among themselves. The Eurohypo Pfandbriefe are covered in accordance with the German Pfandbrief Act (*Pfandbriefgesetz*) and rank *pari passu* with all other obligations of the Collateral Note Issuer under public Pfandbriefe (*Öffentliche Pfandbriefe*).

## 3. INTEREST

### 3.1 Interest Payments

- (a) The Collateral Notes shall bear interest on their Principal Amount (as defined in Section 7) from June 30, 2006 (inclusive) (the "**Interest Commencement Date**") to the first Interest Payment Date (exclusive) and thereafter from each Interest Payment Date (inclusive) to the next following Interest Payment Date (exclusive). Interest payments on the Collateral Notes shall become due and payable quarterly in arrears, on each Interest Payment Date immediately following an Interest Period in which the Collateral Notes bear interest. The amount of interest payable in respect of each Series of Collateral Notes for each Interest Period on any Interest Payment Date (the "**Interest Amount**") shall be calculated by applying the Rate of Interest (as defined in Section 3.2) for such Interest Period to the Principal Amount of such Series of Collateral Notes on the relevant Interest Determination Date (as defined in Section 3.2) and multiplying the result by the actual number of days in the relevant Interest Period divided by 360.
- (b) "**Interest Payment Date**" means each Payment Date as defined in the Terms and Conditions in respect of the Notes, commencing on September 15, 2006. "**Interest Period**" means each period from (and including) the Interest Commencement Date to (but excluding) the first Interest Payment Date and from (and including) each Interest Payment Date to (but excluding) the following Interest Payment Date.

### 3.2 Rate of Interest

The rate of interest payable on the Eurohypo Pfandbriefe for each Interest Period (the "**Rate of Interest**") shall be a rate equal to EURIBOR minus 0.025%.

"**EURIBOR**" for each Interest Period means the rate for deposits in euro for a period of three months (*provided that* with respect to the first Interest Period, such rate shall be interpolated between 2 and 3 months and *provided further that* with respect to the Interest Period preceding October 13, 2006, any Final Redemption Date as defined in the Terms and Conditions in respect of the Notes or any date of final redemption pursuant to Section 11.2(b) of the Terms and Conditions in respect of the Notes, such rate shall be with respect to a period of four months) which appear on Moneyline Telerate Page 248 of the Associated Press-Dow Jones Telerate Service (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 Interest Determination Date (as defined below), all as determined by the Collateral Note Issuer.

If Moneyline Telerate Page 248 is not available or if no such quotation appears thereon, in each case, as at such time, the Collateral Note Issuer shall request the principal Euro-zone office of the Reference Banks selected by it to provide the Collateral Note Issuer 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 Interest Determination Date to prime banks in the Euro-zone interbank market for the relevant Interest 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 Collateral Note Issuer with such offered quotations, EURIBOR for such Interest 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 Interest Determination Date fewer than two of the selected Reference Banks provide the Collateral Note Issuer with such offered quotations, EURIBOR for such Interest Period shall be the rate per annum which the Collateral Note Issuer 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 Collateral Note Issuer by major banks in the Euro-zone interbank market, selected by the Collateral Note Issuer, at approximately 11.00 a.m. (Brussels time) on such Interest Determination Date for loans in Euro to leading European banks for such Interest 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 interbank market. "**Euro-zone**" means the region comprised of those member states of the European Union that have adopted, or will have adopted from time to time, 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).

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

"**Interest Determination Date**" means the second Business Day prior to the commencement of the relevant Interest Period.

"**Business Day**" means, for the purpose of this Section 3.2, a day (other than a Saturday or a Sunday) on which all relevant parts of the Trans-European Automated Real-time Gross Settlement Express Transfer System ("**TARGET**") are operational.

### **3.3 Determinations Binding**

All Rates of Interest and Interest Amounts determined and other calculations and determinations made by the Collateral Note Issuer shall, in the absence of manifest error, be final and binding.

### **3.4 Accrual of Interest**

The Collateral Notes shall cease to bear interest from their due date for redemption. If the Collateral Note Issuer fails to redeem the Collateral Notes when due, interest shall continue to accrue on the then outstanding Principal Amount of the Collateral Notes beyond the due date until actual redemption of the Collateral Notes. The applicable Rate of Interest will be determined in accordance with this Section 3.

## **4. PAYMENTS**

- 4.1 (a) *Payment of Principal.* Payment of principal in respect of Collateral Notes shall be made, subject to Section 4.2 below, to the Clearing System or to its order for credit to the accounts of the relevant accountholders of the Clearing System.
- (b) *Payment of Interest.* Payment of interest on Collateral Notes shall be made, subject to Section 4.2, to the Clearing System or to its order for credit to the relevant

accountholders of the Clearing System. Payment of interest on Collateral Notes represented by the Temporary Global Note shall only be made upon due certification as provided in Section 1.3(b).

#### **4.2 Manner of Payment**

Subject to applicable fiscal and other laws and regulations, payments of amounts due in respect of the Collateral Notes shall be made in euro.

#### **4.3 Discharge**

The Collateral Note Issuer shall be discharged by payment to, or to the order of, the Clearing System.

#### **4.4 Deposit of Principal and Interest**

The Collateral Note Issuer may deposit with the *Amtsgericht* in Frankfurt am Main principal or interest not claimed by Holders within twelve months after the Maturity Date (as defined in Section 7), even though such Holders may not be in default of acceptance of payment. If and to the extent that the deposit is effected and the right of withdrawal is waived, the respective claims of such Holders against the Collateral Note Issuer shall cease.

### **5. AMORTISATION**

#### **5.1 Payments of Principal on Collateral Notes**

- (i) On each date on which any amount of principal is payable on the Class A+ Notes in accordance with the Terms and Conditions, the Series A+ Collateral Notes shall be redeemed in an amount equal to such amount of principal payable on the Class A+ Notes.
- (ii) On each date on which any amount of principal is payable on the Class A Notes in accordance with the Terms and Conditions, the Series A Collateral Notes shall be redeemed in an amount equal to such amount of principal payable on the Class A Notes.
- (iii) On each date on which any amount of principal is payable on the Class B Notes in accordance with the Terms and Conditions, the Series B Collateral Notes shall be redeemed in an amount equal to such amount of principal payable on the Class B Notes.
- (iv) On each date on which any amount of principal is payable on the Class C Notes in accordance with the Terms and Conditions, the Series C Collateral Notes shall be redeemed in an amount equal to such amount of principal payable on the Class C Notes.
- (v) On each date on which any amount of principal is payable on the Class D Notes in accordance with the Terms and Conditions, the Series D Collateral Notes shall be redeemed in an amount equal to such amount of principal payable on the Class D Notes.
- (vi) On each date on which any amount of principal is payable on the Class E Notes in accordance with the Terms and Conditions, the Series E Collateral Notes shall be redeemed in an amount equal to such amount of principal payable on the Class E Notes.

## 5.2 Allocation of Realised Losses

- (i) On each date on which any Realised Losses are allocated to the Class E Notes in accordance with the Terms and Conditions, the Series E Collateral Notes shall be redeemed in an amount equal to the amount of such Realised Losses so allocated.
- (ii) On each date on which any Realised Losses are allocated to the Class D Notes in accordance with the Terms and Conditions, the Series D Collateral Notes shall be redeemed in an amount equal to the amount of such Realised Losses so allocated.
- (iii) On each date on which any Realised Losses are allocated to the Class C Notes in accordance with the Terms and Conditions, the Series C Collateral Notes shall be redeemed in an amount equal to the amount of such Realised Losses so allocated.
- (iv) On each date on which any Realised Losses are allocated to the Class B Notes in accordance with the Terms and Conditions, the Series B Collateral Notes shall be redeemed in an amount equal to the amount of such Realised Losses so allocated.
- (v) On each date on which any Realised Losses are allocated to the Class A Notes in accordance with the Terms and Conditions, the Series A Collateral Notes shall be redeemed in an amount equal to the amount of such Realised Losses so allocated.
- (vi) On each date on which any Realised Losses are allocated to the Class A+ Notes in accordance with the Terms and Conditions, the Series A+ Collateral Notes shall be redeemed in an amount equal to the amount of such Realised Losses so allocated.

5.3 In the event that any Series of Collateral Notes are redeemed as a result of principal payments on the Notes or as a result of an allocation of Realised Losses to the Notes, each Collateral Note of such Series shall be redeemed in an amount equal to the redemption amount determined pursuant to Section 5.1 or 5.2 above divided by the number of Collateral Notes of such Series.

## 6. UNJUSTIFIED LOSS ALLOCATION

- 6.1
- (i) On each date on which the Class Principal Amount of the Class E Notes is increased as a result of the Unjustified Loss Allocation procedure pursuant to Section 9 (Unjustified Loss Allocation) of the Terms and Conditions, after receipt by the Collateral Note Issuer of the amount in euro equal to such increase of the Class Principal Amount, the Series Principal Amount of Series E Collateral Notes shall be re-increased by an amount equal to the amount by which the Class Principal Amount of the Class E Notes was so increased.
  - (ii) On each date on which the Class Principal Amount of the Class D Notes is increased as a result of the Unjustified Loss Allocation procedure pursuant to Section 9 (Unjustified Loss Allocation) of the Terms and Conditions, after receipt by the Collateral Note Issuer of the amount in euro equal to such increase of the Class Principal Amount, the Series Principal Amount of Series D Collateral Notes shall be re-increased by an amount equal to the amount by which the Class Principal Amount of the Class D Notes was so increased.
  - (iii) On each date on which the Class Principal Amount of the Class C Notes is increased as a result of the Unjustified Loss Allocation procedure pursuant to Section 9 (Unjustified Loss Allocation) of the Terms and Conditions, after receipt by the Collateral Note Issuer of the amount in euro equal to such increase of the Class Principal Amount, the Series Principal Amount of Series C Collateral Notes shall be re-increased by an amount equal to the amount by which the Class Principal Amount of

the Class C Notes was so increased.

- (iv) On each date on which the Class Principal Amount of the Class B Notes is increased as a result of the Unjustified Loss Allocation procedure pursuant to Section 9 (Unjustified Loss Allocation) of the Terms and Conditions, after receipt by the Collateral Note Issuer of the amount in euro equal to such increase of the Class Principal Amount, the Series Principal Amount of Series B Collateral Notes shall be re-increased by an amount equal to the amount by which the Class Principal Amount of the Class B Notes was so increased.
- (v) On each date on which the Class Principal Amount of the Class A Notes is increased as a result of the Unjustified Loss Allocation procedure pursuant to Section 9 (Unjustified Loss Allocation) of the Terms and Conditions, after receipt by the Collateral Note Issuer of the amount in euro equal to such increase of the Class Principal Amount, the Series Principal Amount of Series A Collateral Notes shall be re-increased by an amount equal to the amount by which the Class Principal Amount of the Class A Notes was so increased.
- (vi) On each date on which the Class Principal Amount of the Class A+ Notes is increased as a result of the Unjustified Loss Allocation procedure pursuant to Section 9 (Unjustified Loss Allocation) of the Terms and Conditions, after receipt by the Collateral Note Issuer of the amount in euro equal to such increase of the Class Principal Amount, the Series Principal Amount of Series A+ Collateral Notes shall be re-increased by an amount equal to amount by which the Class Principal Amount of the Class A Notes was so increased.

6.2 The Collateral Note Issuer shall promptly after each increase of the Series Principal Amount of any Series of Collateral Notes pursuant to paragraph (1) above notify to the Holders of the then outstanding Series Principal Amount.

## 7. REDEMPTION

Unless previously redeemed in whole or in part or purchased and cancelled, the Collateral Notes shall be redeemed at their Final Redemption Amount on the October 13, 2016 (the "**Maturity Date**"). The "**Final Redemption Amount**" in respect of each Collateral Note shall be its Principal Amount as of the Maturity Date.

"**Principal Amount**" means, with respect to any Collateral Note and 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 Collateral Note as, on or before such date, (i) reduced by any amount paid on such Collateral Note in respect of principal pursuant to Section 5.1 or Section 5.2 and (ii) re-increased as a result of Unjustified Loss Allocation, after receipt by the Collateral Note Issuer of the amount in euro equal to such increase of the Class Principal Amount of the relevant Class of Notes, pursuant to Section 6 above.

"**Series Principal Amount**" means, with respect to any Series of Collateral Notes and any date, the aggregate of the Principal Amounts of such Series.

## 8. TAXATION

All amounts payable in respect of the Collateral Notes shall be made without withholding or deduction for or on account of any present or future taxes or duties of whatever nature imposed or levied by way of withholding or deduction at source by or on behalf of the Federal Republic of Germany or any political subdivision or any authority thereof or therein having power to tax unless such withholding or deduction is required by law.

## 9. PRESENTATION PERIOD

The presentation period provided in Section 801 paragraph 1, sentence 1 of the German Civil Code (*Bürgerliches Gesetzbuch*) is reduced to ten years for the Collateral Notes.

## 10. NOTICES

The Collateral Note Issuer shall deliver all notices concerning the Collateral Notes either to the Clearing System for communication by the Clearing System to the Holders, any such notice shall be deemed to have been given to the Holders on the seventh calendar day after the day on which the said notice was received by the Clearing System, or shall publish the notices concerning the Collateral Notes in one leading daily newspaper having general circulation in Germany. This newspaper is expected to be the *Börsen-Zeitung*. Any notice so published will be deemed to have been validly given on the third calendar day following the date of such publication (or, if published more than once, on the third calendar day following the date of the first such publication).

## 11. MISCELLANEOUS

### 11.1 Place of Performance.

Place of performance of the Collateral Notes shall be Frankfurt am Main.

### 11.2 Cancellation of Collateral Notes.

All Collateral Notes redeemed in full shall be cancelled forthwith and may not be reissued and resold.

### 11.3 Severability.

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

## 12. APPLICABLE LAW; PLACE OF JURISDICTION

### 12.1 Applicable Law.

The Collateral Notes, as to form and content, and all rights and obligations of the Collateral Note Issuer and the Holders, shall be governed by the laws of the Federal Republic of Germany.

### 12.2 Submission to Jurisdiction.

The District Court (*Landgericht*) in Frankfurt am Main shall have non-exclusive jurisdiction for any action or other legal proceedings ("**Proceedings**") arising out of or in connection with the Collateral Notes. The jurisdiction of such Court shall be exclusive if Proceedings are brought by merchants (*Kaufleute*), legal persons under public law (*juristische Personen des öffentlichen Rechts*), special funds under public law (*öffentlich-rechtliche Sondervermögen*) and persons not subject to the general jurisdiction of the courts of the Federal Republic of Germany (*Personen ohne allgemeinen Gerichtsstand in der Bundesrepublik Deutschland*). The German courts shall have exclusive jurisdiction over the annulment of lost or destroyed Collateral Notes.

**13. LANGUAGE**

These Terms and Conditions are written in the English language only.

**14. RESTRICTIONS**

These Collateral Notes will not be offered to the public or admitted to trading on a regulated market situated or operating within a Member State of the European Union. A prospectus in terms of Section 5 of the German Securities Prospectus Act (*Wertpapierprospektgesetz*) of June 22, 2005 will not be provided.

**ANNEX I**

**TERMS AND CONDITIONS OF THE NOTES**

**APPENDIX A TO THE TERMS AND CONDITIONS**

**THE TRUST AGREEMENT**

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**APPENDIX B TO THE TERMS AND CONDITIONS**

**REFERENCE POOL PROVISIONS**

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**APPENDIX C TO THE TERMS AND CONDITIONS**

**SERVICING PRINCIPLES**

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## TERMS AND CONDITIONS OF 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.**

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

CoCo Finance 2006-1 PLC, incorporated under the laws of Ireland as a public limited company with its registered office at Trinity House, Charleston Road, Ranelagh, Dublin 6, Ireland (the "**Issuer**") will issue on June 30, 2006 (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 A+ Floating Rate Credit Linked Notes (the "**Class A+ Notes**") which are issued in an initial aggregate principal amount of EUR 500,000 and divided into 10 Class A+ Notes, each having an initial principal amount of EUR 50,000,
- (b) Class A Floating Rate Credit Linked Notes (the "**Class A Notes**") which are issued in an initial aggregate principal amount of EUR 58,500,000 and divided into 585 Class A Notes, each having an initial principal amount of EUR 100,000,
- (c) Class B Floating Rate Credit Linked Notes (the "**Class B Notes**") which are issued in an initial aggregate principal amount of EUR 72,000,000 and divided into 720 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 45,000,000 and divided into 450 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 40,500,000 and divided into 405 Class D Notes, each having an initial principal amount of EUR 100,000, and
- (f) Class E Floating Rate Credit Linked Notes (the "**Class E Notes**") which are issued in an initial aggregate principal amount of EUR 65,700,000 and divided into 657 Class E 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 depository (in such capacity, the "**Common Depository**") 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 on behalf of the Issuer.

## **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 Eurohypo Pfandbriefe 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 following securities:
  - (a) EUR 500,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG (the "**Series A+ Collateral**") to secure the Trustee Claim with respect to the payment obligations of the Issuer under the Class A+ Notes,
  - (b) EUR 58,500,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG (the "**Series A Collateral**") to secure the Trustee Claim with respect to the payment obligations of the Issuer under the Class A Notes,
  - (c) EUR 72,000,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG (the "**Series B Collateral**") to secure the Trustee Claim with respect to the payment obligations of the Issuer under the Class B Notes,
  - (d) EUR 45,000,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG (the "**Series C Collateral**") to secure the Trustee Claim with respect to the payment obligations of the Issuer under the Class C Notes,
  - (e) EUR 40,500,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG (the "**Series D Collateral**") to secure the Trustee Claim with respect to the payment obligations of the Issuer under the Class D Notes, and
  - (f) EUR 65,700,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG (the "**Series E Collateral**") to secure the Trustee Claim with respect to the payment obligations of the Issuer under the Class E Notes;
- (ii) pledge (*verpfänden*) all its present and future claims and rights under the Transaction Documents (other than the Corporate Administration Agreement, the Irish Security Agreement, the Senior Guarantee and the First Pledge Agreement) to the Trustee 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) assign by way of security all its present and future claims, rights, title and interest in and to the corporate administration agreement (the "**Corporate Administration Agreement**") between the Issuer, the Trustee and Structured Finance Management (Ireland) Limited, Trinity House, Charleston Road, Ranelagh, Dublin 6, Ireland as corporate administrator of the Issuer (the "**Corporate Administrator**") dated June 28, 2006 (together with the collateral referred to under (i) above and the claims and rights pledged as set out under (ii) above, the "**Collateral**") to the Trustee as security for the Trustee Claim (*Treuhänderanspruch*) pursuant to an Irish security agreement (the "**Irish**

**Security Agreement**") between the Issuer and the Trustee dated June 30, 2006.

The pledges over the Eurohypo Pfandbriefe will be subject and rank junior to first ranking pledges (*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 and the Senior Guarantee Counterparty, the Issuer has entered into a trust agreement dated June 30, 2006 (the "**Trust Agreement**") with Ernst & Young AG Wirtschaftsprüfungsgesellschaft, Arnulfstrasse 126, 80636 Munich, 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 Cash Administration Agreement, the Transaction Account Agreement, the Corporate Administration Agreement, the Custody Agreement, the Agency Agreement, the Subscription Agreement, the Securities Purchase Agreement, the Issuer Guarantee, the Senior Guarantee, the Irish Security Agreement and the First Pledge 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 and a London Business Day. "**TARGET Settlement Day**" means a day on which TARGET (the Trans-European Automated Real-time Gross settlement Express Transfer system) 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.

## 7. PAYMENTS OF INTEREST

### 7.1 Accrual Basis

The Note Principal Amount shall bear interest from June 30, 2006 (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 15<sup>th</sup> calendar day of March, June, September and December of each year, subject to Section 6.4 (Payments – Business Day) (each an "**Payment Date**"). The first Payment Date shall be September 15, 2006.

## 7.3 Interest Amount

- (i) 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 Deemed 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).

"**Deemed Note Principal Amount**" of any Note means with respect to any date, the Note Principal Amount of such Note as of such date, as reduced by any Deemed Losses allocated to such Note on the immediately preceding Payment Date or such date, in case such date is a Payment Date.

"**Deemed Loss**" means, with respect to any Reference Claim with respect to which a Credit Event has occurred but the Bank has not yet delivered a notice pursuant to Section 8.3 (Notice to the Trustee), an amount equal to the Outstanding Nominal Amount of such Reference Claim as of the end of the Collection Period during which such Credit Event had occurred.

"**Deemed Recovery**" means, with respect to any Reference Claim with respect to which a Realised Loss is on any Payment Date allocated to any Class of Notes, an amount equal to the excess, if any, of the amount of Deemed Loss with respect to such Reference Claim, over the amount of such Realised Loss.

- (ii) On each Payment Date after any Loss Allocation, increase due to the Unjustified Loss Allocation procedure and any payment of principal on the Notes on such Payment Date, the aggregate amount of any Deemed Losses shall be allocated as follows (the "**Deemed Loss Allocation**"):

first, to reduce the Deemed Threshold Amount,

second, after the Deemed Threshold Amount has been reduced to zero, to reduce equally the Deemed Note Principal Amounts of the Class E Notes,

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

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

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

sixth, after the Deemed Note Principal Amount of each Class B Note has been reduced to EUR 1 per Note, to reduce equally the Deemed Note Principal Amounts of the Class A Notes,

seventh, after the Deemed Note Principal Amount of each Class A Note has been reduced to EUR 1 per Note, to reduce equally the Deemed Note Principal Amounts of the Class A+ Notes to EUR 1 per Note, *provided that* only the product of the Deemed Losses and the A+ Reduction Factor shall be allocated to reduce the Deemed Note Principal Amount of the Class A+ Notes on such Payment Date.

**"Deemed Threshold Amount"** means, in respect of any date, the Outstanding Threshold Amount as of such date, as reduced by any Deemed Losses allocated to the Deemed Threshold Amount on the immediately preceding Payment Date or such date, in case such date is a Payment Date.

- (iii) If on any Payment Date Realised Loss in respect of a Reference Claim is allocated to the Notes and the amount of such Realised Loss is lower than the amount of Deemed Loss (such difference amount, the **"Excess Deemed Loss"**) allocated to the Notes in respect of such Reference Claim, the Issuer shall pay in respect of each Payment Date since the Payment Date on which the Deemed Loss in respect of such Reference Claim was allocated to the Notes until the Payment Date on which such Realised Loss was allocated in respect of the relevant Notes the amount of interest that would have been payable on such Notes but for the allocation of such Excess Deemed Loss at a rate based upon an interpolation of the Interest Rate with respect to such Class of Notes, taking into account the time value of money, as determined in the reasonable discretion of the Bank and verified to be reasonable by the Trustee (such amount of interest, the **"Make-Whole Interest Amount"**).

#### 7.4 Interest Accrual Periods

**"Interest Accrual Period"** means, 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.

#### 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 A+ Notes, EURIBOR plus 0.05% per annum,  
in the case of the Class A Notes, EURIBOR plus 0.20% per annum,  
in the case of the Class B Notes, EURIBOR plus 0.32% per annum,  
in the case of the Class C Notes, EURIBOR plus 0.60% per annum,  
in the case of the Class D Notes, EURIBOR plus 0.95% per annum, and  
in the case of the Class E Notes, EURIBOR plus 3.25% 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 2 and 3 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 Moneyline Telerate Page 248 of the Associated Press-Dow Jones Telerate Service (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 Moneyline Telerate Page 248 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).

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 Amount, the aggregate of the Interest Amounts for all Notes of each Class and the Interest Rates in each case for the immediately following 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 Irish Paying Agent and the Irish Stock Exchange not later than on the first day of such Interest Accrual Period.

## 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 E Notes,

third, 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,

fourth, 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,

fifth, 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,

sixth, 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 A Notes,

seventh, after the Note Principal Amount of each Class A Note has been reduced to EUR 1 per Note, to reduce equally the Note Principal Amounts of the Class A+ Notes to EUR 1 per Note, *provided that* only the product of the Realised Losses and the A+ Reduction Factor shall be allocated to reduce the Class Principal Amount of the Class A+ Notes on such Payment Date, whereby "**A+ Reduction Factor**" means 500,000 divided by 4,126,500,000;

*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,

- (a) which is a EUR 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, or
- (b) which is a Non-EUR Reference Claim, the Outstanding EUR Equivalent 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 of (a) and (b), 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.

**"EUR Reference Claim"** means a Reference Claim which is denominated in euro.

**"Non-EUR Reference Claim"** means a Reference Claim which is denominated in a currency other than euro.

**"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 in the case of a Non-EUR Reference Claim, such amount as converted into euro at the related Exchange Rate (such amount with respect to a Non-EUR Reference Claim, the **"Outstanding EUR Equivalent Amount"**), 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, in the case of a Non-EUR Reference Claim, the Outstanding EUR Equivalent Amount of such sum, and (ii) that is a Defaulted Reference Claim or Liquidated Reference Claim, the Drawn Amount of such Reference Claim, in the case of a Non-EUR Reference Claim, the Outstanding EUR Equivalent Amount thereof,

*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. For the avoidance of doubt, any Collections received with respect to a Non-EUR Reference Claim will not be converted into euro and will reduce directly the outstanding principal amount of such Reference Claim pursuant to the underlying Reference Loan documentation, Reference Facility documentation or Reference Guarantee documentation, as applicable.

**"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, 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, and *provided further that* for the purpose of the determination of Realised Loss, in the case of a Non-EUR Reference Claim, Accrued Interest shall mean such unpaid interest or such contractual or statutory default interest accrued as converted into euro at the related Exchange Rate.

**"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, *provided that* for the purpose of the determination of Realised Loss, in the case of a Non-EUR Reference Claim, Enforcement Costs shall mean such reasonable fees, disbursements, costs and expenses as converted into euro at the related Exchange Rate.

**"Collections"** means, with respect to a Reference Claim, all payments (including prepayments and enforcement proceeds) allocable to the principal amount 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.

"**Collection Period**" means with respect to the first Payment Date, the period from the Cut-off Date until the 15<sup>th</sup> calendar day of the 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 15<sup>th</sup> calendar day of the calendar month immediately 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 91,800,000 (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 10<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 1,000,000, or, if lower, not less than 10% of the Outstanding Nominal 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, and the Accrued Interest 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*, only the product of the A+ Reduction Factor and the amount of such Unjustified Loss Allocation allocable to the Class A+ Notes shall be allocated; 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.

Noteholders shall have no rights with respect to an Unjustified Loss Allocation after the final redemption of their Notes.

"**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

Unjustified Loss Allocation for a given Collection Period, if any, shall be determined and the reinstatement 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

On each Payment Date following the occurrence of the Replenishment Termination Event (as defined in Provision 6.1 (Replenishment) of the Reference Pool Provisions) and on or prior to the end of the Replenishment Period, the Notes shall be redeemed in an amount equal to the Excess Amount as follows:

- (i) the Class A+ Notes shall be redeemed up to an amount or in an amount, as applicable, equal to the product of the Excess Amount and the A+ Reduction Factor;
- (ii) after the Class A+ Notes have been redeemed in full, the Class A, the Class B, the Class C, the Class D and then the Class E Notes, in this order sequentially, shall be redeemed up to an amount or in an amount, as applicable, 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 A+ Notes by the A+ Increase Factor) as of the 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 A+ Notes, by the A+ 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 A+ 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 A+ 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.

## 10.2 Scheduled Maturity and Legal Maturity

The Notes shall be redeemed on the Payment Date falling in June 2016 (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 (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 A+ Notes by the A+ 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 Termination 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.

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

"**Appraised Loss**" means, with respect to any Reference Claim, the excess of (A) the Outstanding Nominal Amount and the Accrued Interest 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) 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 October 13, 2016.

## 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); *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 A+ Notes by the A+ 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

The Issuer shall redeem the Notes (the **"Early Redemption"**) on the date on which the Issuer Guarantee Termination occurs, in each case, at the then current Note Principal Amount as of the relevant Payment Date (the **"Early Redemption Date"**) in accordance with, (i) in respect of paragraph (A) of the definition of Issuer Guarantee Termination, the provisions of Section 10.2 (Redemption – Scheduled Maturity and Legal Maturity), except that references to the Scheduled Maturity Date shall be deemed to be references to the Early Redemption Date and references to the Legal Maturity Date shall be deemed to be references to the Final Redemption Date for the purpose of this Section 12.1(i), or (ii) in respect of paragraph (B) of the definition of Issuer Guarantee Termination Section 11.2 (Early Redemption for Default – Method and Amount), except that (a) the redemption pursuant to Section 11.2 shall be made on the Early Redemption Date, and (b) references to the Termination Date shall be deemed to be references to the Early Redemption Date for the purpose of this Section 12.1(ii).

**"Issuer Guarantee Termination"** occurs on the Payment Date:

- (A) as of which the Issuer Guarantee is terminated by the Bank at its option (i) following the Collection Period during which a Regulatory Event occurred, or (ii) following the

Collection Period during which the aggregate Outstanding Nominal Amount of the Reference Claims has been reduced to 10% of the Replenishment Cap, or (iii) falling in or after June 15, 2011; or

- (B) immediately following the Collection Period during which the termination of the Issuer Guarantee occurred because of the occurrence of an Issuer 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, in each case, that becomes effective 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, 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 Senior Guarantee 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 or the Senior Guarantee) and/or the amount of regulatory capital freed up in respect of any Reference Claim, 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 or the Senior Guarantee 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 Eurohypo Pfandbriefe, the Issuer Guarantee, the Senior Guarantee 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.

**"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).

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

## 12.2 Bank Event of Default

In the event that the termination of the Issuer Guarantee occurs as a result of 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 references to the Termination Date shall be deemed to be references to the Bank Default Termination Date for the purpose of this Section 12.2.

**"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.

**"Bank Default Termination Date"** means the date on which any Bank Event of Default occurs.

## 12.3 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.

## 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 Eurohypo Pfandbriefe, 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 Eurohypo Pfandbriefe (divided by the number of Notes of the Class of Notes relating to such Series of Eurohypo Pfandbriefe).

## 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 and make available upon request at the offices of the Irish Paying Agent, 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 which are Defaulted Reference Claims as of the end of 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; and

- (l) information on each Re-set made, together with the relevant new Exchange Rate, as applicable, during the Related Collection Period.

"**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 in the manner set out in (i) and (ii)(A) and to the Irish Paying Agent on or before the date on which the relevant notice is given in accordance with (ii)(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 Citibank International plc, 1 North Wall Quay, Dublin 1, Ireland as the initial Irish paying agent (the "**Irish Paying Agent**" which term shall include any substitute Irish Paying Agent appointed in accordance with the Transaction Documents). The Issuer has appointed Goodbody Stockbrokers, Corporate Finance, Ballsbridge Park, Dublin 4, 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 Paying Agent, the Irish Listing Agent and the Principal Paying Agent are together referred to as the "**Agents**".

The Irish Paying Agent shall act as intermediary between the Issuer and the holders of the Notes listed on the regulated market of the Irish Stock Exchange. The Irish Paying Agent shall, among others, make available documents and information as specified in the Terms and Conditions and deliver copies of the Prospectus and the published financial statements of the Issuer and the Bank upon request.

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

### 16.2 Replacement

The Issuer shall procure (a) 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, and (b) that for as long as any Notes remain listed on the regulated market of the Irish Stock Exchange there shall always be a paying agent in Ireland 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.

The Issuer may with the prior written consent of the Bank by giving not less than 30 calendar days' notice to the Noteholders, replace the Irish 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-1 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-1 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 Eurohypo Pfandbriefe 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.

### **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 Senior Guarantee Counterparty**

Any reference in the Terms and Conditions to the Senior Guarantee Counterparty (including by reference to the Transaction Creditors) shall not entitle any Noteholder to invoke any of the rights of the Senior Guarantee Counterparty under the Trust Agreement or the Senior Guarantee or to rely on or enforce any breach thereof and shall not limit the right of the Senior Guarantee Counterparty to exercise or to waive any of these 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 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 188 (Attention: Sven Reckwerth / 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.

## APPENDIX A TO THE TERMS AND CONDITIONS

### THE TRUST AGREEMENT

This Trust Agreement is entered into as of June 30, 2006 between Ernst & Young AG Wirtschaftsprüfungsgesellschaft, Arnulfstrasse 126, 80636 Munich, Germany (the "**Trustee**"), CoCo Finance 2006-1 PLC, Trinity House, Charleston Road, Ranelagh, Dublin 6, Ireland (the "**Issuer**") and Commerzbank Aktiengesellschaft, Kaiserplatz, 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 A+ Floating Rate Credit Linked Notes in an initial principal amount of EUR 500,000,
  - (b) Class A Floating Rate Credit Linked Notes in an initial principal amount of EUR 58,500,000,
  - (c) Class B Floating Rate Credit Linked Notes in an initial principal amount of EUR 72,000,000,
  - (d) Class C Floating Rate Credit Linked Notes in an initial principal amount of EUR 45,000,000,
  - (e) Class D Floating Rate Credit Linked Notes in an initial principal amount of EUR 40,500,000, and
  - (f) Class E Floating Rate Credit Linked Notes in an initial principal amount of EUR 65,700,000;
- (ii) a loss guarantee agreement (the "**Issuer Guarantee**") between the Issuer as protection seller and the Bank as protection buyer effective as of June 30, 2006. 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.

In addition, the Bank will enter into a loss guarantee agreement (the "**Senior Guarantee**") between a counterparty as protection seller (the "**Senior Guarantee Counterparty**") and the Bank as protection buyer effective as of June 30, 2006. Pursuant to the Senior Guarantee, the 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 A+ Notes is reduced as a result of any Loss Allocation.

Each amount payable as a result of Realised Losses under the Issuer Guarantee and the Senior Guarantee, is referred to as a "**Cash Settlement Amount**". The Noteholders and the Senior Guarantee Counterparty are jointly referred to as "**Transaction Creditors**".

Terms used but not defined herein have the same meaning as in the Terms and Conditions, or, if not defined therein, in the Senior Guarantee. With respect to Realised Losses giving rise to the payment of any Cash Settlement Amount under the Senior Guarantee, 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. In case of a conflict of interest among the interests of the Senior Guarantee Counterparty and the Noteholders, the Trustee shall give priority to the interests of the Senior Guarantee Counterparty and the Class A+ Noteholders and then, among the other Noteholders, to the interests of the Noteholders of the Class or Classes of Notes which then rank most senior for the allocation of Realised Losses.
- 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*)). 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 June 30, 2006 (the "**Transaction Account Agreement**"); and
- (ii) an account (the "**Cash Collateral Account**") with the Transaction Account Bank opened pursuant to the Transaction Account Agreement.

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 and a new Cash Collateral Account with another Transaction Account Bank, (ii) transfer the funds credited to the Transaction Account and the Cash Collateral Account to such new Transaction Account and such new Cash Collateral Account, respectively, and (iii) close the Transaction Account and the Cash Collateral Account with the former Transaction Account Bank. In such case the Issuer shall within 30 calendar days after receiving such written consent (i) open a new Transaction Account and a new Cash Collateral Account with another Transaction Account Bank having at least the Required Ratings from each of the Rating Agencies, (ii) transfer the funds credited to the Transaction Account and the Cash Collateral Account to such new Transaction Account and such new Cash Collateral Account, respectively, and (iii) close the Transaction Account and the Cash Collateral Account with the former Transaction Account Bank.

In the event that the rating of the Transaction Account Bank or an affiliate of the Transaction Account Bank, the rating of which was taken into account at the appointment of the Transaction Account Bank, by any of the Rating Agencies is withdrawn or falls below the relevant Transaction Account Bank 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 and a new Cash Collateral Account

with another Transaction Account Bank having at least the Transaction Account Bank Required Ratings from each of the Rating Agencies, (ii) transfer any amounts standing to the credit of the Transaction Account and the Cash Collateral Account to such new Transaction Account and such new Cash Collateral Account, respectively, and (iii) close the Transaction Account and the Cash Collateral Account with the former Transaction Account Bank.

**"Transaction Account Bank 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 by or 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.
- 3.5 If, at any time, the rating of the short-term unsecured and unsubordinated debt obligations of the Transaction Account Bank is less than A-1+ but not less than A-1 by S&P and an amount exceeding 20% of the sum of the Class Principal Amounts of all Classes of Notes rated AA- or higher by S&P as of the day immediately preceding any Payment Date (or any other date on which any amount under the Eurohypo Pfandbriefe is payable) is to be paid in respect of the sum of (a) the Eurohypo Pfandbriefe securing such Classes of Notes and (b) the excess, if any, of (A) the aggregate Interest Amount and any Make-Whole Interest Amount payable by the Issuer on the Notes on such Payment Date, over (B) the aggregate amount of the interest amounts due to the Issuer under the Eurohypo Pfandbriefe on such Payment Date (such excess, the **"Spread Amount"**), to the Transaction Account or the Cash Collateral Account on such date, the Bank shall notify S&P in writing prior to such date, and the Issuer or, if the Issuer fails to do so, the Trustee on behalf of the Issuer, shall open a new Transaction Account and Cash Collateral Account with another Transaction Account Bank having an A-1+ rating from S&P and at least the Required Rating from the other Rating Agency and provide an instruction to the Custodian within a reasonable time prior to a Payment Date (or such other date on which any amount under the Eurohypo Pfandbriefe is payable), with the consent of the Trustee, if applicable, to make the payments due under the Eurohypo Pfandbriefe and/or the Spread Amount on such date to such new Transaction Account or Cash Collateral Account.
- 3.6 In the event that
- (i) the rating of the Bank falls below A-2 (short term) by S&P, or A3 (long term) or P-1 (short 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 Issuer shall within 5 Business Days of such Bank Rating Event, or if the Issuer fails to do so, the Trustee on behalf of the Issuer as soon as it becomes aware of such Bank Rating Event but in any event not later than 30 Business Days after having become aware of such Bank Rating Event shall (i) cause an account (the **"A-1+ Cash Collateral Account"**) to be opened with a bank which has the A-1+ Cash Collateral Account Bank Required Rating from each of the Rating Agencies (the **"A-1+ Cash Collateral Account Bank"**) pursuant to an agreement between the Issuer, the Trustee and the Cash Collateral Account Bank (the **"A-1+ Cash Collateral Account Agreement"**), (ii) transfer any amounts standing to the credit of the Cash Collateral Account to the A-1+ Cash Collateral Account, and (iii) close the Cash Collateral Account with the Transaction Account Bank.

In the event that the rating of the A-1+ Cash Collateral Account Bank by any of the Rating Agencies is withdrawn or falls below the relevant A-1+ Cash Collateral Account Bank Required

Rating, the Issuer shall within 5 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 A-1+ Cash Collateral Account with another A-1+ Cash Collateral Account Bank having at least the A-1+ Cash Collateral Account Bank Required Rating from each of the Rating Agencies, (ii) transfer any amounts standing to the credit of the A-1+ Cash Collateral Account to such new A-1+ Cash Collateral Account, and (iii) close the A-1+ Cash Collateral Account with the former A-1+ Cash Collateral Account Bank.

"**A-1+ Cash Collateral Account Bank Required Rating**" means the following ratings: A-1+ (short term) by S&P and P-1 (short term) and/or Aa3 (long term) by Moody's.

The Transaction Account Bank and the A-1+ Cash Collateral Account Bank are together referred to as the "**Account Banks**" and the Transaction Account and the Cash Collateral Account or A-1+ Cash Collateral Account are together referred to as the "**Accounts**".

#### 4. EUROHYPO PFANDBRIEFEN; PLEDGES

4.1 On or before the Issue Date the Issuer has purchased pursuant to a securities purchase agreement dated June 30, 2006 (the "**Securities Purchase Agreement**") from Eurohypo AG the securities set forth under (i) through (vi) below:

- (i) EUR 500,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG (the "**Series A+ Collateral**"),
- (ii) EUR 58,500,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG (the "**Series A Collateral**"),
- (iii) EUR 72,000,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG (the "**Series B Collateral**"),
- (iv) EUR 45,000,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG (the "**Series C Collateral**"),
- (v) EUR 40,500,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG (the "**Series D Collateral**"), and
- (vi) EUR 65,700,000 floating rate public Pfandbriefe (*Öffentliche Pfandbriefe*) of Eurohypo AG (the "**Series E Collateral**").

Each of the Series of Collateral under (i) through (vi) is referred to as a "**Series**". The Series A+ Collateral, Series A Collateral, the Series B Collateral, the Series C Collateral, the Series D Collateral and the Series E Collateral are collectively referred to as the "**Eurohypo Pfandbriefe**".

Each Series will be represented by a global certificate deposited with the Clearstream Banking AG, Frankfurt am Main ("**Clearstream Frankfurt**"). The Eurohypo Pfandbriefe will be held in the securities account no. 21463800 (the "**Custody Account**") of the Issuer with Citigroup Global Markets Deutschland AG & Co. KGaA, Frankfurter Welle, Reuterweg 16, 60323 Frankfurt am Main, Germany (in such capacity and each successor custodian, the "**Custodian**") pursuant to a custody agreement between the Issuer, the Trustee and Citibank, N.A., London Branch dated June 13, 2006 (the "**Custody Agreement**").

4.2 Pursuant to the terms of the first pledge agreement between the Issuer and the Bank dated

June 30, 2006 (the "**First Pledge Agreement**"), the Issuer has pledged (*verpfänden*) the Eurohypo Pfandbriefe 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 Eurohypo Pfandbriefe shall be limited to the portion of the Eurohypo Pfandbriefe 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 Eurohypo Pfandbriefe, subject to the condition subsequent (*auflösende Bedingung*) as set out in the following sentence, to the Trustee as trustee (*Treuhänder*) for the security purposes set forth in Clause 4.4 below. The pledge referred to in the preceding sentence shall be automatically extinguished upon receipt by the Issuer of the amounts equal to the Strike Price on the date of receipt of such amounts with respect to such number of notes constituting the Eurohypo Pfandbriefe the aggregate nominal amount of which is equal to such amount in EUR. The Trustee hereby accepts such pledges. For the purpose of constituting such pledges, the Issuer hereby assigns to the Trustee all of its present and future claims and rights against the Bank for delivery of the Eurohypo Pfandbriefe (including, but not limited to, the claim for re-delivery of the Eurohypo Pfandbriefe pursuant to § 1223(1) of the German Civil Code (*Bürgerliches Gesetzbuch*)).

4.4 The pledges pursuant to Clause 4.3 shall serve to secure the Trustee Claim as follows:

- (i) the pledge over the Series A+ Collateral shall serve to secure the Trustee Claim with respect to the payment obligations of the Issuer under the Class A+ Notes,
- (ii) the pledge over the Series A Collateral shall serve to secure the Trustee Claim with respect to the payment obligations of the Issuer under the Class A Notes,
- (iii) the pledge over the Series B Collateral shall serve to secure the Trustee Claim with respect to the payment obligations of the Issuer under the Class B Notes,
- (iv) the pledge over the Series C Collateral shall serve to secure the Trustee Claim with respect to the payment obligations of the Issuer under the Class C Notes,
- (v) the pledge over the Series D Collateral shall serve to secure the Trustee Claim with respect to the payment obligations of the Issuer under the Class D Notes, and
- (vi) the pledge over the Series E Collateral shall serve to secure the Trustee Claim with respect to the payment obligations of the Issuer under the Class E 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 and all its present and future claims and rights under the Cash Collateral Account,
  - (b) the agency agreement between the Issuer, the Trustee and the Principal Paying

Agent dated June 28, 2006 (the "**Agency Agreement**"),

- (c) the subscription agreement for the Notes between the Issuer and Commerzbank Aktiengesellschaft (in such capacity, the "**Lead Manager**") dated June 30, 2006 (the "**Subscription Agreement**"),
  - (d) the Securities Purchase Agreement,
  - (e) the Issuer Guarantee,
  - (f) 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 June 30, 2006 (the "**Cash Administration Agreement**"), and
  - (g) the Custody Agreement; and
- (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 Administration 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)(e) 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 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 Collateral Account and deal in the ordinary course of business with the claims and rights pledged to the Trustee pursuant to 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 A-1+ Cash Collateral Account with the A-1+ Cash Collateral Account Bank pursuant to Clause 3.5, the Issuer shall pledge (*verpfänden*) all its present and future claims and rights under the A-1+ Cash Collateral Account Agreement to the Trustee to secure the Trustee Claim pursuant to Clause 3.

## 6. CASH COLLATERAL

- 6.1 Pursuant to the Issuer Guarantee, on the Issue Date, the Bank shall deposit an amount into a separate account with the Transaction Account Bank having the Transaction Account Bank Required Rating (such account, the "**Cash Collateral Account**") 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 by the Bank, the Issuer shall be entitled to employ the Cash Collateral towards its payment obligation of any Interest Amount due or outstanding on the Notes.

"**Guarantee Fee**" means the amount payable by the Bank to the Issuer 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 and any Make-Whole 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 Eurohypo Pfandbriefe on the relevant Payment Date.

- 6.2 Pursuant to the Issuer Guarantee, in the event that the ratings of the Bank are upgraded to A-1+ (short term) by S&P and P-1 (short 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 or the A-1+ Cash Collateral Account, as applicable, an amount equal to the amount of the Cash Collateral on such Payment Date.
- 6.3 Pursuant to the Issuer Guarantee, in the event that, subsequent to any upgrading pursuant to Clause 6.2 above, the ratings of the Bank are downgraded below A-1+ (short term) by S&P and/or P-1 (short term) by Moody's, the Bank shall on the Payment Date following such downgrading deposit an amount equal to the Cash Collateral on such Payment Date in the Cash Collateral Account.

## 7. FORECLOSURE ON COLLATERAL

- 7.1 If and to the extent any Notes become due and subject to early redemption (each such Note, a "**Foreclosure Note**") upon the occurrence of a Foreclosure Event the Trustee shall, if in its professional judgement the payments due and payable under the Collateral on the date on which the Foreclosure Notes become due have not been made, foreclose or cause foreclosure on the Collateral (including the relevant Series of the Eurohypo Pfandbriefe). 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.

"**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 Eurohypo Pfandbriefe

In case of the Eurohypo Pfandbriefe, the following shall apply:

- (i) as soon as reasonably practicable but not before the Early Redemption Report has been delivered to the Trustee with respect to payments due under the Notes pursuant to Section 11.1 and Section 11.2 of the Terms and Conditions, respectively, or, in the case of (ii) under the definition "Foreclosure Event" later than three Business Days after the Trustee becomes aware of a Foreclosure Event with respect to the relevant Class of Notes (whether by notification from the Issuer or the Bank pursuant to Clause 7.6 below or otherwise), it shall organise or have organised for each Series of Eurohypo Pfandbriefe a panel of at least 3 Dealers to bid for the purchase of such Series of Eurohypo Pfandbriefe on a day selected by the Trustee having regard to the market conditions as well as the interest of the Noteholders in a prompt redemption of the Foreclosure Notes. If the Trustee receives:
  - (a) 3 or 2 bids for the Series of Eurohypo Pfandbriefe which equal or exceed the relevant Foreclosure Amount, the Trustee shall sell and transfer such Series of Eurohypo Pfandbriefe to the Dealer who offered the highest of such bids (in case of more than one highest bid, the Trustee shall, at its discretion, select one of the Dealers who offered the highest bid);
  - (b) only 1 bid for the Series of Eurohypo Pfandbriefe which is equal or exceeds the relevant Foreclosure Amount, the Trustee shall sell and transfer such Series of Eurohypo Pfandbriefe to the Dealer who offered such bid;
  - (c) only 1 bid for the Series of Eurohypo Pfandbriefe which is lower than the relevant Foreclosure Amount or no bid, the Trustee shall (subject to paragraph (ii) below) select another panel of Dealers and repeat the procedure pursuant to this Clause 7.2.

**"Foreclosure Amount"** means, in respect of each Class of Foreclosure Notes, the sum of (i) the Class Principal Amount of such Foreclosure Notes and (ii) the accrued interest thereon.

**"Dealer"** means a dealer in bonds (or syndicate of such dealers) of recognised standing operating in the Eurobond market selected by the Trustee to bid for the Series of Eurohypo Pfandbriefe pursuant to this Clause 7.

- (ii) If, with respect to any Series of Eurohypo Pfandbriefe, the Trustee is not able to effect foreclosure pursuant to this Clause 7.2, including, for the avoidance of doubt, the receipt of the proceeds thereof at least equal to the relevant Foreclosure Amount, within ten Business Days after the selection of the first panel of Dealers, or earlier, if, in the professional judgement of the Trustee, the relevant Foreclosure Amount cannot be achieved, it shall proceed in accordance with Clause 7.3 with respect to such Series of Eurohypo Pfandbriefe.

7.3 In the event that any Series of Eurohypo Pfandbriefe is not realised in accordance with Clause 7.2 above, the Trustee shall, in accordance with the written instructions of the relevant Noteholders delivered to the Principal Paying Agent and specifying the relevant transfer details, transfer and deliver in book-entry form or cause to be transferred and delivered in book-entry form such Series of Eurohypo Pfandbriefe to the Noteholders of the Class of the Foreclosure Notes secured by such Series of Eurohypo Pfandbriefe in exchange for, and upon surrender of, the Notes of such Class held by such Noteholders, and in full satisfaction of all obligations for the payment of principal of

and accrued interest on such Class of the Foreclosure Notes, *provided that* the Trustee will in each case transfer and deliver or cause to be transferred and delivered such number of Eurohypo Pfandbriefe, as applicable, representing such Series of Eurohypo Pfandbriefe that the total principal amount of the Eurohypo Pfandbriefe delivered to any Noteholder of such Class is equal to the aggregate Note Principal Amount of the Notes of such Class held by such Noteholder of such Class as of the date of such transfer (rounded upwards to the nearest euro).

7.4 Without prejudice to the instructions given by the Noteholders pursuant to Clause 7.3 above, the Trustee shall give notice to the Noteholders specifying in reasonable detail, with respect to each Class of the Foreclosure Notes, the relevant Foreclosure Amount, and (i) the enforcement procedure and the amounts and time of payment of the proceeds of foreclosure on the Eurohypo Pfandbriefe, and (ii) the time and precise manner in which it shall deliver the relevant Series of Eurohypo Pfandbriefe to the Noteholders of such Class.

## **7.5 Other Collateral**

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

7.6 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.

7.7 The Trustee shall apply the proceeds of any foreclosure (i) first, to the Noteholders of the Class of Foreclosure Notes secured by such Series of Eurohypo Pfandbriefe in redemption of such Class of the Foreclosure Notes in accordance with the Terms and Conditions, (ii) second, after all claims under (i) have been fully satisfied, to reimburse the Trustee for all its claims against the Issuer under this Agreement, if any, and (iii) finally, after all claims under (i) and (ii) have been fully satisfied, to transfer the remaining proceeds, if any, to the Issuer. The Issuer shall apply any remaining proceeds it so receives in accordance with the Priority of Payments set out in Clause 30.2(d).

7.8 The Trustee shall promptly notify each of the Rating Agencies about the selection of panel(s) of Dealers and all determinations pursuant to this Clause 7.

7.9 Upon the occurrence of a Foreclosure Event, the Trustee shall be obliged towards the Noteholders to effect the foreclosure on the Eurohypo Pfandbriefe and on the other Collateral pursuant to this Clause 7 regardless of whether the Issuer performs its obligations under this Agreement, including in particular its obligations under Clauses 22 and 24.

## **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 3<sup>rd</sup> Business Day 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 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;
- (viii) information on individual Unjustified Loss Allocations and their distribution and allocation;
- (ix) in respect of each Non-EUR Reference Claim, the Outstanding EUR Equivalent Amount(s) and the applicable Exchange Rate(s), as well as the outstanding nominal amount in the currency of the Reference Claim;
- (x) information on each Re-set with respect to the Collection Period;
- (xi) a computation of any Cash Settlement Amounts due from the Issuer and the Senior Guarantee Counterparty, respectively;
- (xii) 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;

- (xiii) information it has received on the occurrence of a Default Event; and
- (xiv) the amounts of principal (if any) payable on each Note on the related Payment Date.

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 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 12.1 (Early Redemption by the Issuer – Issuer Guarantee Termination) of the Terms and Conditions, if relevant;
- (v) details with respect to the Overdue Reference Claims for the purposes of Section 12.1 (Early Redemption by the Issuer – Issuer Guarantee Termination) of

the Terms and Conditions;

- (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 or a Value Expert duly appointed pursuant to Clause 15 or a vicarious agent (*Erfüllungsgehilfe*) duly appointed pursuant to Clause 20, *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 (*Plausibilitätsprüfung*), other than the documents provided pursuant to Clause 18.1(i). 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 Issuer and the Bank 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 paragraph 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 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 Issuer, the Bank and the Rating Agencies 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 paragraph 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 and (ii) the Senior Guarantee Counterparty pursuant to the provisions of the Senior Guarantee (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 paragraph 10.3, give a written confirmation to the Issuer and to the Bank to the effect that (i) it has performed the check (*Plausibilitätsprüfung*) of the Reports referred to in paragraph 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 paragraph 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 paragraph 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 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 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 Issuer and the Bank notice thereof and shall proceed in accordance with Clause 14. The determination and/or 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 Reference Pool Provisions.

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 (as defined in the Issuer Guarantee and the Senior Guarantee, respectively) 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) of the Reference Pool Provisions (Non-compliance) are met;
- (ii) the conditions under Provision 9(a)(B) of the Reference Pool Provisions (Non-compliance) 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; RE-SET 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 Issuer and the Bank 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 next Payment Date or, if later, 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.
- 13.3 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 any determination in connection with the Non-EUR Reference Claims was erroneous, the Trustee shall promptly give the Bank and the Issuer Notice thereof and shall proceed in accordance with Clause 14. A determination in connection with the Non-EUR Reference Claims shall be erroneous if, *inter alia*, a Re-set is made in breach of Provision 2.3 (Reference Claims – Non-EUR Reference Claims – Conversion; Re-sets) of the Reference Pool Provisions.
- 13.4 If a Notice is received by the Bank that a Re-set is erroneous, such Re-set and all other Re-sets of the Non-EUR Reference Claims denominated in the same Re-set Currency on the given Re-set Date shall not be effected and the Outstanding EUR Equivalent Amounts of the relevant Non-EUR Reference Claims shall be as last determined in accordance with Provision 2.3 (Non-EUR Reference Claims – Conversion; Re-sets) of the Reference Pool Provisions until and unless the disputed Re-set is determined pursuant to Clause 14.

### **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 Clause 13.3 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 which is not an affiliate of either the Issuer, the Bank, or the Trustee (the "**Expert**") to resolve the disputed matter. 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 paragraph 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 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 paragraph 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 Subject to Clause 7.9, 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 and the Senior Guarantee is available to it and that it is familiar with the terms of the Senior Guarantee and the Terms and Conditions.

## 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 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, and
  - (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 and (iii) to the Senior Guarantee Counterparty.
- 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 Senior Guarantee Counterparty as long as the Senior Guarantee 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 30 calendar days' notice of its replacement of the Principal Paying Agent; and
- (vi) not agree to any amendment of any Transaction Document to which it is a party unless each Rating Agency has confirmed that such amendment will not adversely affect the rating of the Notes.

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,
- (f) have any employees,
- (g) amend 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; and
- (d) maintain its status as a qualifying company in the meaning of Section 110 of the Irish Taxes Consolidation Act, 1997.

## 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 (*Erfüllungsgelhilfen*, § 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 paragraph 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 Issuer and the Trustee with the consent of the Bank.

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**

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 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 Senior Guarantee Counterparty upon the occurrence of good cause (*aus wichtigem Grund*), (C) after having been (i) so instructed in writing by Noteholders representing at least 50% 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 Senior Guarantee Counterparty upon the occurrence of good cause (*aus wichtigem Grund*), (ii) by Noteholders representing at least 50% 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 paragraphs (1) through (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, which must be a bank, financial services institution, auditing firm or law firm of recognised standing which has its principal office in Germany and with respect to which each of the Rating Agencies 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, (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. 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 Senior Guarantee Counterparty pursuant to the Senior Guarantee.

- 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 merchant (*Sorgfaltspflicht eines ordentlichen Kaufmanns*).

## **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 paragraph 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 amounts received under the Eurohypo Pfandbriefe) 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.
- 30.2 (a) Any amounts received by the Issuer under the Collateral, 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;
  - (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 Administrator, the Custodian, 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 Administrator, the Custodian or the Account Banks).
- (d) The proceeds of any foreclosure on the Collateral by the Trustee shall be applied in accordance with Clause 7.7 and the Issuer shall apply any proceeds it receives pursuant to Clause 7.7(iii) in accordance with paragraph (c).

"**Order of Seniority**" means *first*, Class A+, *second*, Class A, *third*, Class B, *fourth*, Class C, *fifth*, Class D and *sixth*, Class E Notes.

## 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 fax, *provided that* notices regarding termination of this Trust Agreement or the replacement of the Trustee given by e-mail or fax 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:

Ernst & Young AG Wirtschaftsprüfungsgesellschaft  
Arnulfstrasse 126  
80636 Munich  
Germany

Attn.: Dr. Karl Hamberger; Dr. Alexander Aberger  
Telephone: (+49) 89 14 331 13662; (+49) 89 14 331 13714  
Facsimile: (+49) 89 14 331 13199  
E-mail: karl.hamberger@de.ey.com; alexander.aberger@de.ey.com

- (b) if to the Issuer:

CoCo Finance 2006-1 PLC  
Trinity House  
Charleston Road  
Ranelagh  
Dublin 6  
Ireland

Attn.: The Directors  
Telephone: +353 1 491 4055  
Facsimile: +353 1 491 4056  
Email: directors@sfmilimited.com

- (c) if to the Bank:

Commerzbank Aktiengesellschaft  
Kaiserplatz  
60261 Frankfurt am Main  
Germany

Attn.: Securitisation  
Telephone: (+49) 69 136 41681  
Facsimile: (+49) 69 136 43057  
Email: securitisation@commerzbank.com

- (d) if to the 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: europeansurveillance@standardandpoors.com

- (f) if to Moody's:

Moody's Investors Service Limited  
2 Minister Court  
Mincing Lane  
London EC3R 7XB  
United Kingdom

Attn.: SFG CDO Monitoring  
Facsimile: +44 20 7772 5400  
Email: monitor.cdo@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, *provided that* any amendment shall also require the prior Rating Agency confirmation that such amendment will not adversely affect the rating of any Class of Notes.
- 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 Hamburg. 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 188 (Attention: Sven Reckwerth / 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.

## APPENDIX B TO THE TERMS AND CONDITIONS

### 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, and denominated in various currencies, 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 and letters of credit (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. On any Re-set Date, the Bank may re-set the Outstanding EUR Equivalent Amount of any Non-EUR Reference Claim by a new Outstanding EUR Equivalent Amount determined by application of a current Bank Exchange Rate, *provided that* certain Re-set Conditions are met.

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, 2006 (the "**Cut-off Date**") was approximately EUR 4.5 billion (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 1 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 with respect to the Non-EUR Reference Claims, the outstanding principal amount of each such Non-EUR Reference Claim in the currency of such Reference Claim as of the Cut-off Date or the relevant Replenishment Date and the Initial Exchange Rate or Exchange Rate, as applicable, 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 previous Reference Claim with the Eligibility Criteria as of the Cut-off 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.

### 2.3 *Non-EUR Reference Claims - Conversion; Re-sets*

- (a) The Bank shall specify in the relevant Reference Claim List in respect of each Non-EUR Reference Claim the Bank Exchange Rate as of the Cut-off Date or, in the case of a Non-EUR Reference Claim which is added to the Reference Pool on any Replenishment Date, the Bank Exchange Rate prevailing on or about such Replenishment Date (each such rate, the "**Initial Exchange Rate**").

"**Bank Exchange Rate**" means, with respect to a Non-EUR Reference Claim and at any time, the mid-market foreign exchange rate for the conversion from the relevant currency into euro fixed by the Bank for its own foreign exchange transactions pursuant to its standard internal regulations, expressed as a ratio between (i) one euro and (ii) an equivalent of one euro in such currency.

- (b) On any Replenishment Date (each such date, a "**Re-set Date**") the Bank may re-set the then Outstanding EUR Equivalent Amounts of the Non-EUR Reference Claims denominated in the same currency (the "**Re-set Currency**") by new Outstanding EUR Equivalent Amounts to be specified (together with the relevant new Exchange Rate) in the Re-set Notice (each a "**Re-set**"), subject to the following conditions (the "**Re-set Conditions**"):
- (i) Provision 6.1 (Replenishment) shall apply to each Re-set as if it constituted a Replenishment;
  - (ii) Re-set shall be made for all (but not some only) Non-EUR Reference Claims denominated in the Re-set Currency other than the Non-EUR Reference Claims with respect to which a Credit Event has occurred;
  - (iii) the new Outstanding EUR Equivalent Amounts of the respective Non-EUR Reference Claims must be determined on the basis of the Bank Exchange Rate on the Re-set Date; and
  - (iv) the Bank (or a Servicer on its behalf) shall provide the Trustee with each new Outstanding EUR Equivalent Amount in the relevant Re-set Notice pursuant to paragraph (e) below.

"**Exchange Rate**" means at any time in respect of a Non-EUR Reference Claim, the foreign exchange rate which was last specified in the Reference Claim List or the relevant Re-set Notice in respect of such Non-EUR Reference Claim pursuant to paragraph (a) above or paragraph (e) below;

- (c) Each Re-set made in accordance with paragraph (b) shall become effective as of 12:00 a.m. (London time) on the Re-set Date, and upon such effectiveness, the new Outstanding EUR Equivalent Amounts determined with respect to the relevant Non-EUR Reference Claims shall replace the previous Outstanding EUR Equivalent Amounts of such Non-EUR Reference Claims.
- (d) If in respect of a Re-set of the Outstanding EUR Equivalent Amount of a Non-EUR Reference Claim, any of the Re-set Conditions (other than the condition relating to the delivery of the Re-set Notice) is not complied with as of the Re-set Date, all Re-sets as of such Re-set Date of the Reference Claims denominated in the same Re-set Currency as the Reference Claim in respect of which the non-compliance occurred shall have no effect and the Outstanding EUR Equivalent Amounts of the relevant Reference Claims shall not be affected by such purported Re-sets.

- (e) Not later than the 3<sup>rd</sup> Business Day following each Re-set Date, the Bank shall notify the Trustee of each Re-set effected on the immediately preceding Re-set Date pursuant to this Provision 2.3 (each such notice, a "**Re-set Notice**") by reference to (i) the identification number and, if relevant, other identifiers attributed to such Non-EUR Reference Claim, (ii) the new applicable Exchange Rate and (iii) the Outstanding EUR Equivalent Amount of each Non-EUR Reference Claim with respect to which a Re-set was effected as of such Re-set Date.
- (f) The Outstanding EUR Equivalent Amount and the Exchange Rate with respect to each Non-EUR Reference Claim, as well as reasonable details of the determination thereof, shall be available in the records of the Bank and/or the relevant Servicer.
- (g) Any Collections received with respect to a Non-EUR Reference Claim will not be converted into euro and will reduce directly the outstanding principal amount of such Reference Claim pursuant to the underlying Reference Loan documentation, Reference Facility documentation or Reference Guarantee documentation, as applicable.

### **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.

"**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.

#### 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 4.5, as applicable, are not complied with in relation to the actual allocation of the relevant payments or enforcement proceeds, such allocation shall, for the purpose of allocation hereunder and the determination of Realised Losses, 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 Cut-off 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 and (b) 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) no payment on such Reference Claim is overdue (irrespective of any applicable grace period);
- (viii) no litigation is pending with respect to such Reference Claim nor, to the best knowledge of the Bank is any such litigation threatened;
- (ix) the final maturity of such Reference Claim falls on or before the last day of the Collection Period immediately preceding the Scheduled Maturity Date;
- (x) 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;
- (xi) the information provided in respect of the Reference Claims in the prospectus (the "**Prospectus**") dated June 28, 2006 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,
- (xii) 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,
- (xiii) no agreement has been concluded for such Reference Claim according to which its repayment of principal or interest would be suspended;
- (xiv) the Bank has not commenced enforcement proceedings against the Debtor of such Reference Claim;
- (xv) 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;
- (xvi) the Debtor of such Reference Claim has a Commerzbank Rating between 1.0 and 3.8 (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;

- (xvii) the Debtor of such Reference Claim is not a special purpose vehicle established for the

purpose of a structured finance transaction.

Compliance with the Eligibility Criteria as of the Cut-off 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 15<sup>th</sup> calendar day of any month (each such day, a "**Replenishment Date**") during the period from (and including) the Issue Date until (and including) June 15, 2011 (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 4,500,000,000.

- (ii) in respect of each such new Reference Claim the Eligibility Criteria (other than the Eligibility Criterion set out in Provision 5(ix) and (xi) of the Reference Pool Provisions) must be met;

- (iii) no Replenishment Termination Event has occurred;

"**Replenishment Termination 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 Arranger using the Moody's CDOROM, is less than or equal to Hurdle Moody's Metric.

"**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 Arranger by Moody's on or before the Issue Date, as such programme may be modified by Moody's from time to time.

"**Moody's Metric**" means, in respect of any Replenishment Date, a numerical equivalent of a rating deduced from the expected loss, determined by the Arranger 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 A+</i>	<i>1</i>
<i>Class A</i>	<i>1</i>
<i>Class B</i>	<i>3</i>
<i>Class C</i>	<i>6</i>

<i>Class of Notes</i>	<i>Hurdle Moody's Metric</i>
<i>Class D</i>	9
<i>Class E</i>	12

"**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 Arranger using the S&P CDO Evaluator.

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

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

- 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) the Subordination Amount minus the aggregate of the Defaulted Reference Claims multiplied by the S&P Loss Rate relating to the relevant Class of Notes 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 Arranger 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.

- (iv) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims with respect to a single Debtor that has a Commerzbank Rating of 3.8 to exceed EUR 20,000,000;
- (v) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims with respect to a single Debtor that has a Commerzbank Rating of 3.6 to exceed EUR 20,000,000;
- (vi) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims with respect to a single Debtor that has a Commerzbank Rating of 3.4 to exceed EUR 20,000,000;
- (vii) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims with respect to a single Debtor that has a Commerzbank Rating of 3.2

- to exceed EUR 50,000,000;
- (viii) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims with respect to a single Debtor that has a Commerzbank Rating of 3.0 to exceed EUR 85,000,000;
  - (ix) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims with respect to a single Debtor that has a Commerzbank Rating of 2.8 to exceed EUR 100,000,000;
  - (x) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims with respect to a single Debtor that has a Commerzbank Rating of 2.6 to exceed EUR 100,000,000;
  - (xi) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims with respect to a single Debtor that has a Commerzbank Rating of 2.4 to exceed EUR 100,000,000;
  - (xii) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims with respect to a single Debtor that has a Commerzbank Rating of 2.2 to exceed EUR 110,000,000;
  - (xiii) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims with respect to a single Debtor that has a Commerzbank Rating of 2.0 to exceed EUR 120,000,000;
  - (xiv) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims with respect to a single Debtor that has a Commerzbank Rating of 1.8 to exceed EUR 120,000,000;
  - (xv) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims with respect to a single Debtor that has a Commerzbank Rating of 1.6 to exceed EUR 120,000,000;
  - (xvi) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims with respect to a single Debtor that has a Commerzbank Rating of 1.4 to exceed EUR 120,000,000;
  - (xvii) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims with respect to a single Debtor that has a Commerzbank Rating of 1.2 to exceed EUR 120,000,000;
  - (xviii) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims with respect to a single Debtor that has a Commerzbank Rating of 1.0 to exceed EUR 120,000,000;
  - (xix) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims, the Debtors of which have a Commerzbank Rating between 3.0 and 3.8, to exceed 20% of the Aggregate Principal Balance;
  - (xx) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims, the Debtors of which are domiciled in Germany, to exceed 50% of the Aggregate Principal Balance;
  - (xxi) the maturity of such new Reference Claim does not exceed 10 years;

- (xxii) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims, the Debtors of which are domiciled in the United Kingdom, to exceed 50% of the Aggregate Principal Balance;
- (xxiii) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims, the Debtors of which are domiciled in countries other than Germany or the United Kingdom, to exceed 15% of the Aggregate Principal Balance;
- (xxiv) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims, the Debtors of which belong to the financial intermediaries industry, to exceed 15% of the Aggregate Principal Balance;
- (xxv) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims, the Debtors of which belong to the telecommunications industry, to exceed 15% of the Aggregate Principal Balance;
- (xxvi) such new Reference Claim may not cause the aggregate Outstanding Nominal Amounts of all Reference Claims, the Debtors of which belong to a single industry other than the financial intermediaries industry or the telecommunications industry, to exceed 12% 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 2.8 (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. Any Reference Claim transferred in accordance with the requirements set out under (A) above 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 Cut-off 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(ix) (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.

## APPENDIX C TO 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) 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) forego 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) forego 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.